



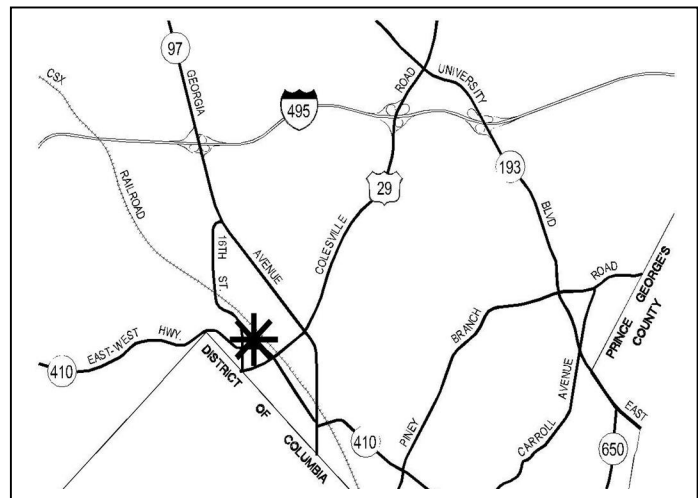
Falkland North: Sketch Plan 320150020, Preliminary Plan Amendment 12007056A, and Site Plan Amendment 82012005A

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Description

Completed: 08/28/2015

- Up to 1,250 dwelling units and 120,000 square feet nonresidential uses in five buildings;
- Located in the northeast corner of the intersection of 16th Street and East-West Highway in the Silver Spring CBD;
- 9.77 gross acres zoned CR 3.0: C 0.75, R 3.0, H 145 T in the Silver Spring CBD Sector Plan area;
- Application accepted December 3, 2014;
- Applicant: Falkland Road Residential, LLC.
- Review Basis: Chapter 50 and Chapter 59, Montgomery County Code



Summary

- **Staff recommendation: Approval of the sketch plan, preliminary plan amendment, and site plan amendment with conditions.**
- Since the Planning Board approved the previous Project, Preliminary, and Site Plans for redevelopment of this site, the property has changed ownership. The project today, while keeping the use and density limits of the original approvals, completely re-imagines the site and building design.
- The previous applicant entered into a Declaration of Restrictive Covenant with M-NCPPC, which included certain developer commitments that run with the land. The Declaration is now proposed to be revised, primarily to address issues related to affordable housing.

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SECTION 1: EXECUTIVE SUMMARY

Sketch Plan No. 320150020

The sketch plan will supersede the approved Project Plan 920070080 and establish the density of the subject property up to 1,156,329 square feet of residential uses, consisting of up to 1,250 dwelling units, including 12.5% moderately priced dwelling units (MPDUs) and 4.72% other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses. The total floor area requested is 1,276,329 square feet, to be placed in five buildings over three phases. The maximum height of the tallest building will be 145 feet. The sketch plan meets all of the general requirements and development standards of Section 4.5. The optional method public benefits provision of Division 4.7, and the general development standards of Article 59-6 of the Zoning Ordinance. A previous applicant for a project on this site executed a Declaration of Restrictive Covenant with M-NCPPC that includes certain development commitments that run with the land. The recommended conditions of approval include a requirement that the applicant execute a revised Declaration of Restrictive Covenant to reflect changes requested by the applicant and ensure that the redevelopment of this site yields a substantial amount of affordable housing. Staff recommends approval of the sketch plan with conditions.

Preliminary Plan Amendment No. 12007056A

The preliminary plan amendment will create one lot for the uses described above and will also create one outlot for future dedication to the Purple Line. This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the Sector Plan. Staff recommends approval with conditions.

Site Plan No. Amendment No. 82012005A

The site plan is for Phase 1 of the project, which is for up to 337,610 square feet of residential development consisting of up to 368 dwelling units, including 12.5% MPDUs and 4.72% other affordable housing units, and up to 96,000 square feet of nonresidential (retail, restaurant, or service) uses in two buildings at the intersection of East-West Highway and 16th Street. The Phase 1 site plan meets all of the general requirements and development standards of Section 4.5 of the Zoning Ordinance, the optional method public benefits provisions of Division 4.7 of the Zoning Ordinance, and the general development requirements of Article 59-6 of the Zoning Ordinance.

SECTION 2: RECOMMENDATION AND CONDITIONS

Sketch Plan No. 320150020

Staff recommends approval of Sketch Plan No. 320150020, Falkland North, for construction of a maximum total density of 1,276,329 square feet of development on the Subject Property, subject to the following binding elements and conditions:

Binding Elements

1. Maximum density and height;
2. Approximate location of lots and public dedications;
3. General location and extent of public open space;
4. General location of vehicular access points; and
5. Public benefit schedule.

All other elements of the Sketch Plan are illustrative.

Recommended Conditions of Approval

1. Previous Conditions

All conditions imposed by the approval of Project Plan No. 920070080 in Planning Board Resolution MCPB No. 10-162 dated December 13, 2010, are superseded by the conditions contained herein.

2. Density

The development is limited to a maximum of 1,276,329 square feet of total development, including up to 1,250 dwelling units, including 12.5% moderately priced dwelling units (MPDUs) and 4.72% other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses.

3. Height

The development is limited to the maximum height of 145 feet, as measured from the approved building height measuring point for each building. In accordance with Section 59-4.1.7.C.2 of the Zoning Ordinance, the building height measuring point for Building 1A is the level of the approved curb grade on 16th Street at the middle of the building's 16th Street façade; the building height measuring point for Building 1B is the level of the approved curb grade on East-West Highway at the middle of the building's East-West Highway façade; the building height measuring point for Building 4 is the level of the approved curb grade on East-West Highway at the middle of the building's East-West Highway façade; the building height measuring point for Building 5 is the level of the approved curb grade on East-West Highway at the middle of the building's East-West Highway façade; the building height measuring point for Building 2 is the level of the average elevation of the finished ground surface along the front of the building.

4. Incentive Density

The development must be constructed with the public benefits listed below, unless modifications are made under Section 59-7.3.3.I. Total points must equal at least 100 and be chosen from at least four categories as required by Section 59-4.5.4.2.a. The requirements of Division 59-4.7 and the *CR Zone Incentive Density Implementation Guidelines* must be fulfilled for each public benefit proposed. Final points will be established at site plan approval.

- a. Major Public Facilities, achieved through provision of a shared-use path and a bike share station;
- b. Transit Proximity, achieved through proximity to a Metrorail station;
- c. Connectivity and Mobility, achieved through advanced dedication of Purple Line right-of-way, provision of fewer than the maximum parking spaces, transit access improvements, and provision of wayfinding;
- d. Quality of Building and Site Design, achieved through ground floor transparency and structured parking; and
- e. Protection and Enhancement of the Natural Environment, achieved through building lot termination, cool roof, habitat preservation and restoration, vegetated roof, and vegetated wall.

5. Moderately Priced Dwelling Units (MPDUs)

The Planning Board accepts the recommendations of the Montgomery Department of Housing and Community Affairs ("MCDHCA") in its letter dated August 27, 2015, and hereby incorporates them as conditions of the Sketch Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDHCA may amend if the amendments do not conflict with other conditions of the Sketch Plan approval.

6. Declaration of Restrictive Covenant
 - a. Prior to certification of any site plan, the Applicant must execute and record an amended Declaration of Restrictive Covenant with M-NCPPC. The amendments to be made are specified in Attachment C to the Falkland North Staff Report dated August 28, 2015.
 - b. The Applicant must comply with the terms of the Declaration of Restrictive Covenant to be executed between the Applicant and M-NCPPC, as amended.

7. Off-Site Stream Restoration

Before issuance of the building permit that includes the 651st dwelling unit, the Applicant must begin work on the habitat preservation and restoration on the South Parcel. The preservation and restoration work must be completed within 18 months after it begins.

Preliminary Plan Amendment No. 12007056A

Staff recommends approval of Preliminary Plan No. 12007056A, Falkland North, for one lot for construction of a maximum total density of 1,276,329 square feet of development on the Subject Property, and one outlot for future Purple Line dedication, subject to the following binding elements and conditions:

1. All conditions imposed by the approval of Preliminary Plan No. 120070560 in Planning Board Resolution MCPB No. 10-163 dated December 14, 2010, are superseded by the conditions contained herein.

2. Approval is limited to one lot for a maximum density of 1,156,329 square feet of residential uses, consisting of up to 1,250 multi-family units including 12.5% moderately priced dwelling units ("MPDUs") and 4.72% other affordable housing units, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses and one outlot for future Purple Line dedication.

3. The Applicant must comply with the binding elements and conditions of approval for Sketch Plan No. 320150020.

4. Prior to issuance of an associated Sediment Control Permit from the Montgomery County Department of Permitting Services ("MCDPS"), the Applicant must obtain approval of a revised Final Forest Conservation Plan ("FFCP") from the Planning Department, subject to the following:
 - a. The Applicant must revise the FFCP to clarify the mitigation planting requirements of at least 199.5 caliper inches of replacements.
 - b. The tree save component of the FFCP addressing impacted trees and transplanting specifications must be prepared by a Maryland licensed tree care expert who is also an ISA certified arborist.

5. The certificate of compliance that satisfies the 1.25-acre total afforestation requirement (or as determined by the approved revised FFCP) must be submitted by the Applicant and approved by M-NCPPC Office of the General Counsel prior to any clearing, grading or demolition within the project area.

6. Prior to certification of any site plan, the Applicant must provide Staff with a noise analysis that identifies existing and 20-year-projected noise contours showing any portions of the Subject Property under that site plan that are subject to noise levels exceeding 65 dBA.
7. Prior to issuance of any above-grade building permit, the Applicant must provide certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn and must commit to construct the units in accordance with these design specifications, with any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.
8. Prior to certification of any site plan, the Applicant must submit for Staff approval the details for and location of noise mitigation techniques to attenuate current noise levels to no more than 65 dBA Ldn for areas of common outdoor activity.
9. After construction is complete, and prior to issuance of final residential occupancy permits, the Applicant must provide Staff with a certification from an engineer specializing in acoustics confirming that the dwelling units were constructed in accordance with the approved specifications for noise attenuation.
10. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“MCDHCA”) in its letter dated August 27, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDCHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated January 28, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
12. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 30, 2014, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
13. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
14. The Applicant must show on the applicable final record plat(s) the following right-of-way dedications, Public Improvement Easements, or Public Access Easements consistent with the 2000 Approved and Adopted *Silver Spring Central Business District and Vicinity Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
 - a. East-West Highway (MD 410): Dedication necessary to provide:
 - i. A minimum of 59 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 118 feet within 300 feet of the 16th Street intersection.

- ii. A minimum of 55 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 110 feet for the remainder of the Subject Property's East-West Highway frontage.
 - b. 16th Street (MD 390): Dedication necessary to provide 60 feet between the property line and right-of-way centerline to support a master planned future right-of-way of 120 feet.
15. The Applicant must install short term public bicycle parking along the retail frontages and near public open space. Secure long-term bicycle parking must be installed internal to the residential buildings or garages for residents' use.
16. The Applicant must enter into a Traffic Mitigation Agreement ("TMAg") with the Planning Board and MCDOT to participate in the Silver Spring Transportation Management District and must execute the TMAg prior to the release of any above grade building permit for development on the Subject Property, exclusive of any sheeting and shoring permit. The TMAg must include trip mitigation measures recommended by MCDOT.
17. Prior to recordation of the plat, the Applicant must record a deed of easement covering the driveway at the eastern boundary of the Subject Property, as shown on the Preliminary Plan, granting the adjoining property owner and any successors and assigns the non-exclusive right to use the driveway for public access from East-West Highway to the adjoining property upon that property's redevelopment. The deed of easement must be reviewed and approved by the M-NCPPC General Counsel's Office prior to recordation, and its liber and folio number must be reflected on the record plat.
18. Prior to recordation of the plat, the Applicant must record a covenant stating that, at the Maryland Transit Administration's ("MTA") request, the Applicant will dedicate to MTA for public use for the Purple Line Locally Preferred Alternative (LPA), at no cost, the area designated on the certified Preliminary Plan as "Future Dedication" or any such lesser area within the designated area as is determined by MTA to be necessary. The covenant may specify that such dedication shall be made when the County or State has incorporated the Purple Line improvements in an adopted County Capital Improvements Program ("CIP") or State Consolidated Transportation Program ("SCTP") which provides for appropriation of funds equal to the estimated costs of designing and constructing any portion of the Purple Line improvements. The covenant will remain in effect for 15 years from the date of the mailing of the Planning Board resolution. The record plat must include a reference to the recorded covenant.
19. The Applicant must grant and the record plat must show an access easement on the Subject Property to the MTA, as referenced in a letter dated November 3, 2010, from MTA, between 16th Street and the proposed Purple Line Locally Preferred Alternative alignment. The access easement must be shown on the certified Preliminary Plan.
20. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
21. The record plat must show necessary easements.

22. The final number of MPDUs and other affordable housing units as per condition #2 above will be determined at the time of site plan(s) approval.
23. Prior to recordation of the plat, the Applicant must record in the land records the executed amended Declaration of Restrictive Covenant. The liber and folio of the recorded document must be referenced on the plat.
24. No clearing, grading or recording of plats prior to certified site plan approval.
25. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
26. Include the stormwater management concept approval letter and Preliminary Plan resolution on the approval or cover sheet(s).
27. The Applicant must construct all road and frontage improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.
28. Prior to recordation of any plat, Site Plan No. 82012005A must be certified by Staff.
29. 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.

Site Plan Amendment No. 82012005A

Staff recommends approval of Site Plan Amendment 82012005A for a total of up to 433,610 square feet of mixed-used development, including up to 337,610 square feet of residential development consisting of up to 368 residential units, including 12.5% MPDUs and 4.72% other affordable housing units, and up to 96,000 square feet of nonresidential (retail, restaurant, or service) uses on approximately 9.77 gross acres in the CR 3.0 C 0.75, R 3.0, H 145 T zone. 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 except as modified by the following conditions.¹

1. Previous Conditions
All conditions imposed by the approval of Site Plan No. 820120050 in Planning Board Resolution MCPB 12-12 dated June 28, 2012, are superseded by the conditions contained herein.
2. Sketch Plan Conformance
The Applicant must comply with the binding elements and conditions of approval for Sketch Plan No. 320150020.
3. Preliminary Plan Conformance
The Applicant must comply with the conditions of approval for Preliminary Plan Amendment No. 12007056A.

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

Environment

4. Forest Conservation & Tree Save

The Applicant must comply with the conditions of the approved Final Forest Conservation Plan and Tree Save Plan.

5. Noise Attenuation

For any residential dwelling units to be constructed within the projected 65, dBA Ldn noise contour, the Applicant must disclose in writing to all prospective residents that those units are impacted by transportation noise.

Public Use Space, Facilities and Amenities

6. Public Use Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 18,240 square feet of public open space (6% of net lot area) on-site.
- b. The Applicant must construct Silver Spring CBD streetscape standard, including but not limited to street trees, street lighting, brick paving, and the undergrounding of utilities, along the Subject Property's frontage on 16th Street and East West Highway, as shown on the Certified Site Plan.
- c. Before the issuance of the final use and occupancy certificate, all public open space areas in Phase 1 must be completed.

7. Public Benefits

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

a. Major Public Facilities

The Applicant must provide a shared-use path and a bikeshare station as shown on the Certified Site Plan.

b. Transit Proximity

The Subject Property is located adjacent to a Metrorail station, which allows the development to be eligible for Level 1 transit as defined in the Zoning Ordinance. Public benefits points will be split evenly between Phase 1 and future phases, with 20 points for Phase 1.

c. Connectivity and Mobility

i. Advanced Dedication

The Applicant must comply with condition 18 of Preliminary Plan No. 12007056A relating to dedication to the Maryland Transit Administration ("MTA").

ii. Minimum Parking

The Applicant must not provide more than 1,179 parking spaces on the Subject Property.

iii. Transit Access Improvement

The Applicant must install sidewalk and ramp improvements at the intersection of 16th Street and East West Highway as shown on the Certified Site Plan.

iv. Wayfinding

The Applicant must install signs in conjunction with the shared-use path on East West Highway directing pedestrians and bicyclists to the Silver Spring Metrorail station.

d. Quality Building and Site Design

i. Architectural Elevations

The Applicant must design and construct the ground floors of the buildings to provide visibility into and out of the ground floor spaces. Entrance doors must be placed substantially as shown on the Certified Site Plan.

ii. Structured Parking

The Applicant must provide 527 parking spaces within above-grade structures and 639 parking spaces within below grade structures on the Subject Property. Public benefit points will be prorated by phase based on the percentage of structured parking provided in each phase.

e. Protection and Enhancement of the Natural Environment

i. Building Lot Termination (“BLT”)

The Applicant must purchase BLT easements in an amount equal to 7.5% of the incentive density floor area. One BLT must be purchased for each 31,500 square feet of gross floor area.

ii. Cool Roof

All roof areas not covered by vegetated roof or mechanical equipment must be covered by a cool roof having a minimum solar reflectance index of 75.

iii. Vegetated Roof

The Applicant must install a vegetated roof with a soil depth of a minimum of 4 inches covering a minimum of 33% of the buildings’ roofs, excluding space for mechanical equipment.

iv. Vegetated Wall

The Applicant must install a vegetated wall on the west side of Building 1A, covering an area of 696 square feet, as illustrated on the Certified Site Plan. The vegetated wall must be visible from 16th street.

8. Recreation Facilities

a. Before Certified Site Plan approval, the Applicant must meet the requirements for all applicable recreational elements and demonstrate to Staff that each element meets M-NCPPC Recreation Guidelines.

b. The Applicant must provide at a minimum the following recreation facilities: Indoor community space, swimming pool, indoor fitness facility, picnic/sitting areas, a bike system, and a pedestrian system.

9. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to pedestrian pathways, landscaping, hardscape, recreation facilities, and public open space.

Transportation & Circulation

10. Pedestrian & Bicycle Circulation

a. The Applicant must provide 164 long-term (private) and 15 short-term (public) bicycle parking spaces.

b. The private spaces must be on-site in a secured, well-lit bicycle room adjacent to the covered parking area, and the public spaces must be inverted-U racks installed in a location convenient to the main entrance (weather protected preferred). The specific location(s) of the public bicycle rack(s) must be identified on the Certified Site Plan.

Moderately Priced Dwelling Units (MPDUs)

11. The Planning Board accepts the recommendations of the Montgomery Department of Housing and Community Affairs (“MCDHCA”) in its letter dated August 27, 2015, and hereby incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDHCA may amend if the amendments do not conflict with other conditions of the Site Plan approval.

Site Plan

12. Building Height

The development is limited to the maximum height of 76 feet for Building 1A and 89 feet for Building 1B, as measured from the building height measuring point for each building described in Condition No. 3 of Sketch Plan 320150020.

13. Site Design

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

14. Landscaping

- a. Before issuance of the final residential use and occupancy certificate for this Site Plan, all on-site amenities including, but not limited to, streetlights, sidewalks/pedestrian pathways, hardscape, benches, trash receptacles, bicycle facilities, recreation amenities (including the indoor community space for the residents, pedestrian system and picnic/seating areas), and public use space amenities within the phase must be installed.
- b. The Applicant must install the landscaping associated with this phase no later than the next growing season after completion of each phase and site work.

15. Lighting

- a. Before issuance of any above-grade building permit, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the Illuminating Engineering Society of North America (IESNA) recommendations in effect on the date of this resolution for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations in effect on the date of this resolution.
- b. Deflectors must be installed on all up-lighting fixtures to prevent excess illumination and glare.
- c. Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting public roads and residentially developed properties.
- d. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

16. Site Plan Surety and Maintenance Agreement

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

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount;

- b. The cost estimate must include applicable Site Plan elements including, but not limited to, entrance signage features, decorative and security fencing, plant materials, on-site lighting, and exterior site furniture, all recreation and playground equipment/features, retaining walls, railings, alleys, curbs, gutters, sidewalks and associated improvements; and
- c. The bond or surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety will be followed by inspection and release of the surety.

17. Development Program

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

18. Certified Site Plan

Before 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 letter, stormwater management concept approval letter, development program, and Sketch Plan resolution, Preliminary Plan resolution and Site Plan resolution on the approval or cover sheet(s).
- b. Add a note to the Site Plan stating that “M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading.”
- c. Add a note stating that “Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
- d. Modify data table to reflect development standards approved by the Planning Board.
- e. Ensure consistency of all details and layout between Site and Landscape plans.
- f. Show on the site plan a building height measuring location for each building. In accordance with Section 59-4.1.7.C.2 of the Zoning Ordinance, building height is measured from the level of approved curb grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof. On a corner lot exceeding 20,000 square feet, the height of the building may be measured from either adjoining curb grade. If a building is set back from the street line 35 feet or more, then the building height is measured from the average elevation of finished ground surface along the front of the building.
- g. Revise the data table to show the approved maximum building heights for Building 1A and Building 1B.

SECTION 3: SITE DESCRIPTION

Site Vicinity

The subject property is located in the northeast quadrant of the intersection of 16th Street and East-West Highway (MD 410) at the edge of the Silver Spring CBD. The adjacent uses consist primarily of multi-family residential dwellings, including low-rise walk-up garden apartments and high-rise buildings, but also include an office building, single-story retail uses, and the CSX, Metro, and future Purple Line tracks to the northeast. The site is within walking distance of the Silver Spring Metro and MARC commuter rail stations, as well as the future Transit Center and Capital Crescent Trail.

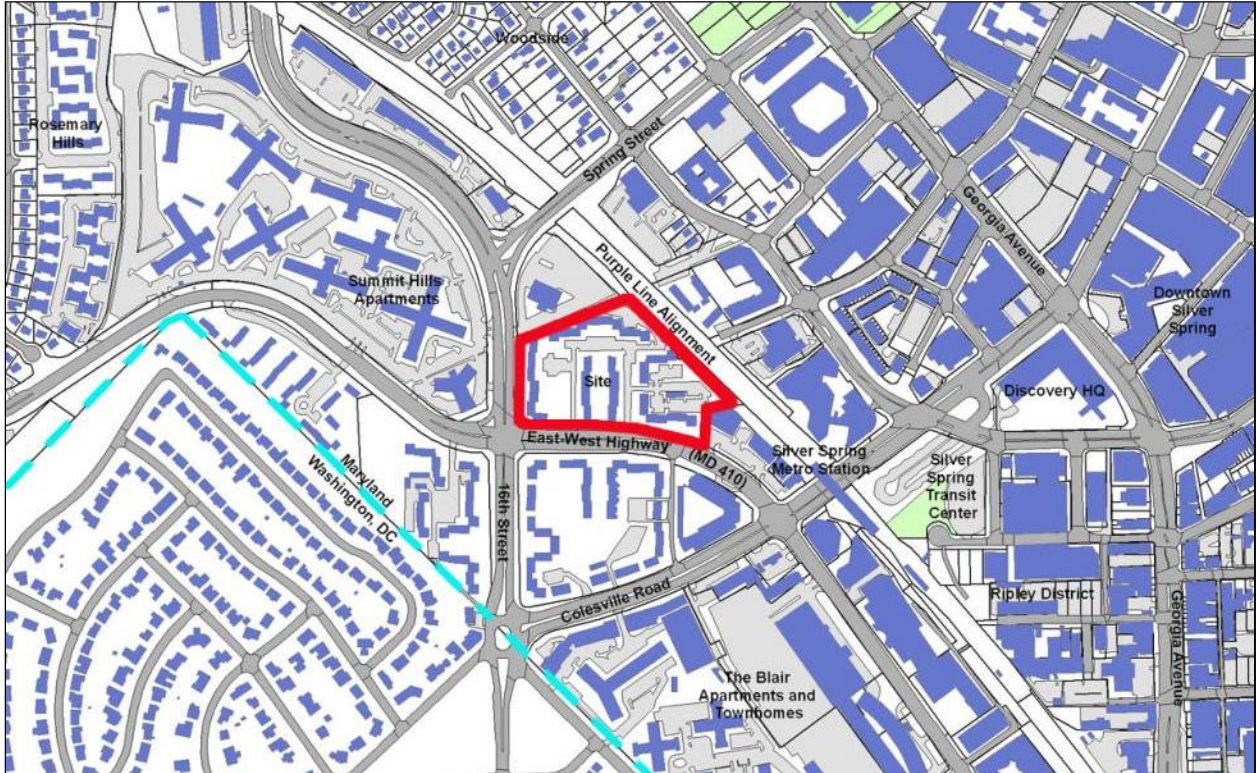
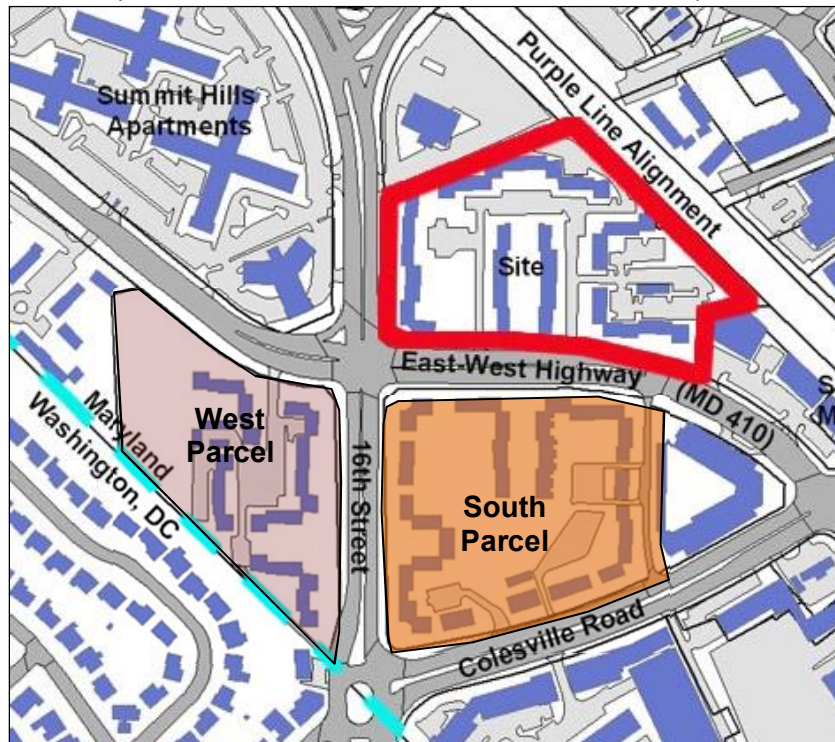


Figure 1-Vicinity Map

The larger Falklands residential community consists of three parcels distributed about the intersection of East-West Highway and 16th Street. The North Parcel, the subject site, is located in the northeast quadrant; the South Parcel in the southeast quadrant; and the West Parcel in the southwest quadrant.



Parcel Map

Site Analysis

The property is currently developed with multi-family housing and has no forest. However, the site contains numerous trees, many of which are significant or specimen in size. There are no streams or wetlands onsite but there is an ephemeral channel which appears to have historically sustained a stream flow. The hydrology in the vicinity has been altered by development and extensive grading for the adjacent railroad corridor. The channel currently does not meet stream definition and is not buffered. The site is located within the Rock Creek watershed, a use I watershed².



Figure 2-Aerial View

SECTION 4: PROJECT DESCRIPTION

Previous Approvals

On November 3, 2006, a previous applicant submitted an application for Project Plan 920070080 for a 1,157,757 square-foot mixed-use development at this location that included 1,020 multi-family dwelling units and 62,000 square feet of retail uses in the CBD-R1 zone. Pursuant to section 24A-10 of the County Code (historic preservation ordinance: moratorium on alteration or demolition), when the property owner submitted a project plan application for the redevelopment of the site's north parcel, the Planning Board evaluated the historical and architectural significance of the existing Falkland Apartments. On December 6, 2007, after finding all three

² Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply and industrial water supply.

of the site's parcels eligible for designation in the Master Plan for Historic Preservation, the Planning Board directed staff to initiate an amendment to that Master Plan.

On September 4, 2008, the Planning Board approved the Planning Board Draft Amendment to the Master Plan for Historic Preservation: Falkland Apartments, #36/12. The amendment recommended that the Falkland Apartments' south and west parcels be added to the Master Plan. Faced with the challenge of weighing the benefits of historic preservation with those related to other planning objectives, the Board found that the north parcel did not merit designation because greater public benefit could be achieved through the redevelopment of the north parcel than by the parcel's designation. The Board did retain the north parcel on the Locational Atlas until such time as a site plan for the entirety of the north parcel was approved (see page 27). The County Council approved the Falkland Apartments amendment on March 31, 2009, thereby adding the south and west parcels of the Falkland Apartments to the Master Plan for Historic Preservation.

Pursuant to this decision, the previous applicant entered into a Declaration of Restrictive Covenant with M-NCPPC specifying certain proffers and expectations incumbent upon the submission of a revised proposal (Attachment B). These included, among other provisions:

- 4.72% of the final number of approved dwelling units will be subject to the County's Workforce housing law for a period of 20 years, and an equivalent number must be provided as Workforce housing off-site within the larger Falkland residential community for a period of 20 years.
- As an off-site public amenity, the Applicant must restore and beautify the stream area on the South Parcel.
- All new buildings shall at a minimum earn a LEED-Silver certification.
- Street frontage, use, and architectural review, to be applied at Site Plan.
- Requirements for the bedroom mix of residential units.

As discussed below in this staff report, the applicant of the current project is requesting modifications to several of these provisions.

On November 18, 2010, the Planning Board approved Project Plan 920070080 and Preliminary Plan 120070560, for a multi-building mixed-use development with a total of 1,276,329 square feet, including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units). The preliminary forest conservation plan and associated variance request was also approved by the Planning Board at that time.

On January 19, 2012, the Planning Board approved site plan 820120050 for a multi-building mixed-use development with a total of 1,276,329 square feet, including 70,000 sf. of retail and 1,250 multi-family and townhouse dwelling units (including 12.5% MPDUs and 4.72% Workforce Housing Units).

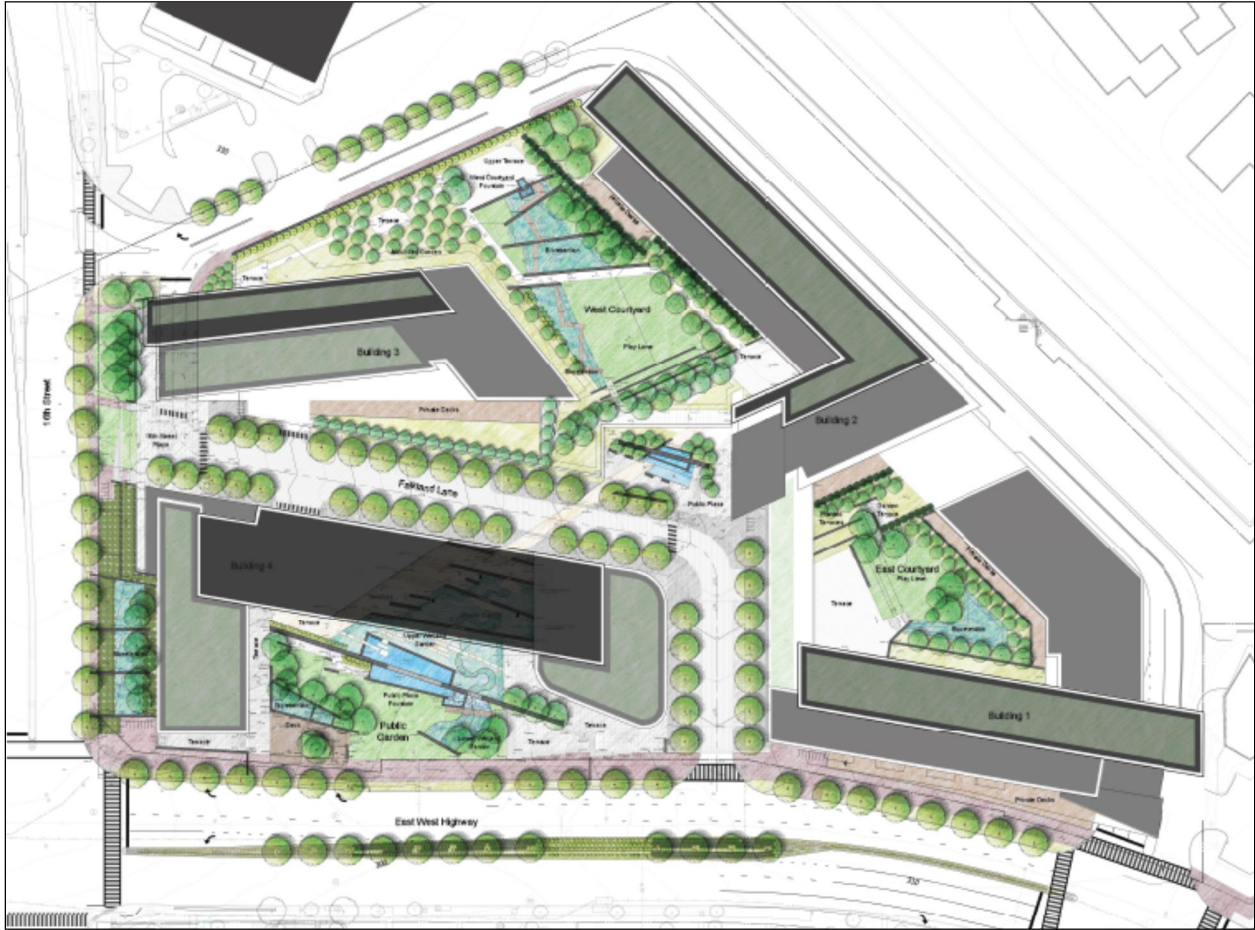


Figure 3-Previously Approved Site Plan

Proposal
Subdivision

The preliminary plan amendment will create one lot to allow for a maximum density of 1,156,329 square feet of development of residential uses, consisting of up to 1,250 multi-family units including 12.5% MPDUs and 4.72% WFHUs, and up to 120,000 square feet of nonresidential (retail, restaurant, or service) uses. The preliminary plan amendment will also create one outlot for future dedication to the Purple Line right-of-way.

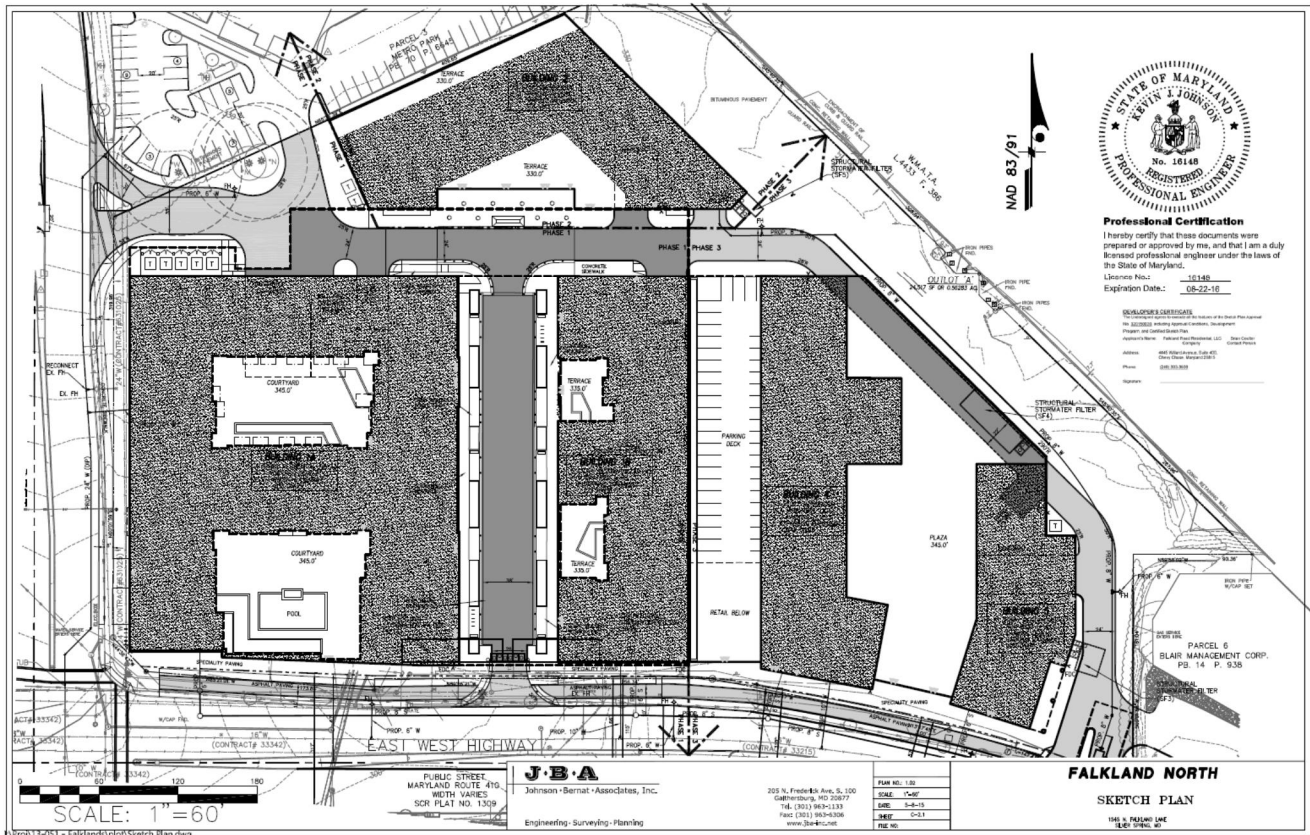


Figure 4-Sketch Plan

Buildings

The Plan includes five new buildings with a new block structure. Within each phase, the buildings are expected to share underground structured parking. The buildings are designed with a retail podium lining the East-West Highway and 16th Street and the new private “Market Street,”³ with the residential towers rising above. The top of the podia will provide private recreational amenities for residents. As illustrated below, the buildings range in height from six stories at the corner of East-West Highway and 16th Street to up to 15 stories along the tracks.

³ Although not officially a street, the internal driveway that enters the property from East West Highway has been named “Market Street” by the applicant for their promotional purposes.



Figure 5-Illustrative Building Massing

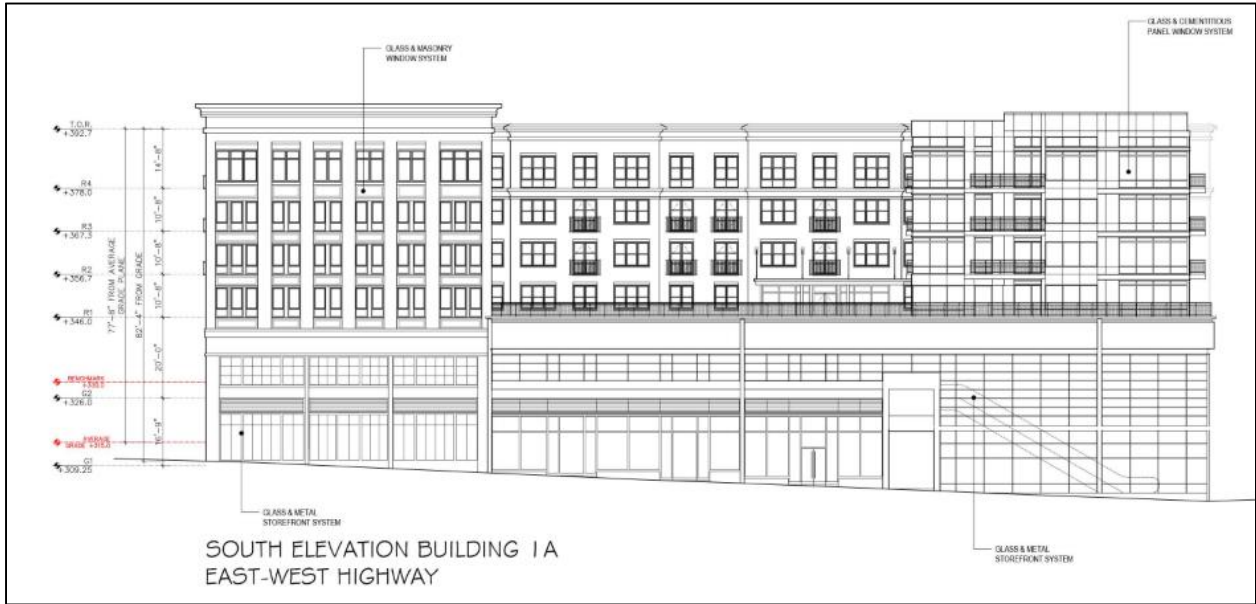


Figure 6-Building 1A, South Elevation

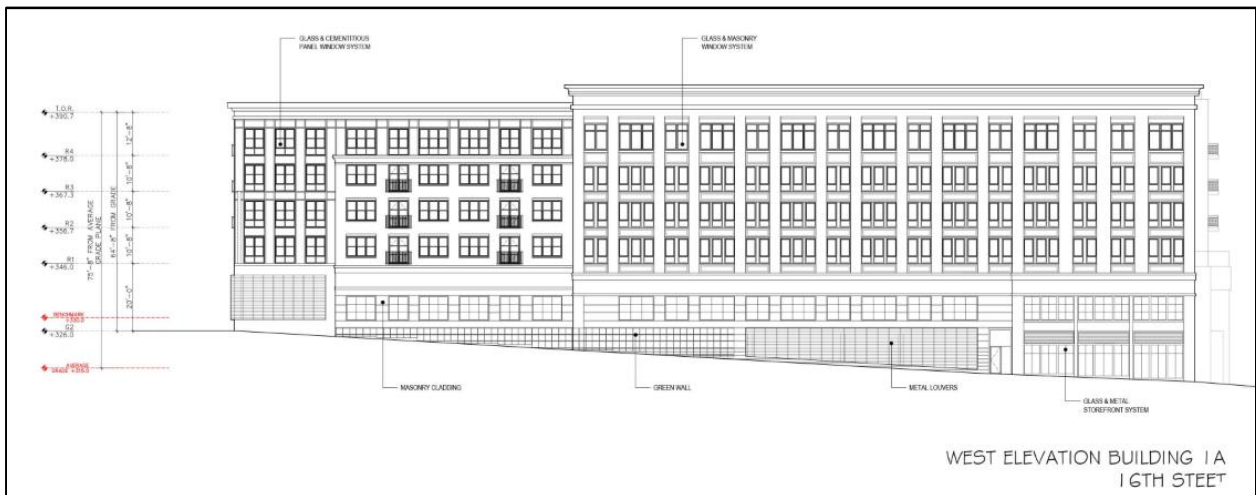


Figure 7-Building 1A, West Elevation

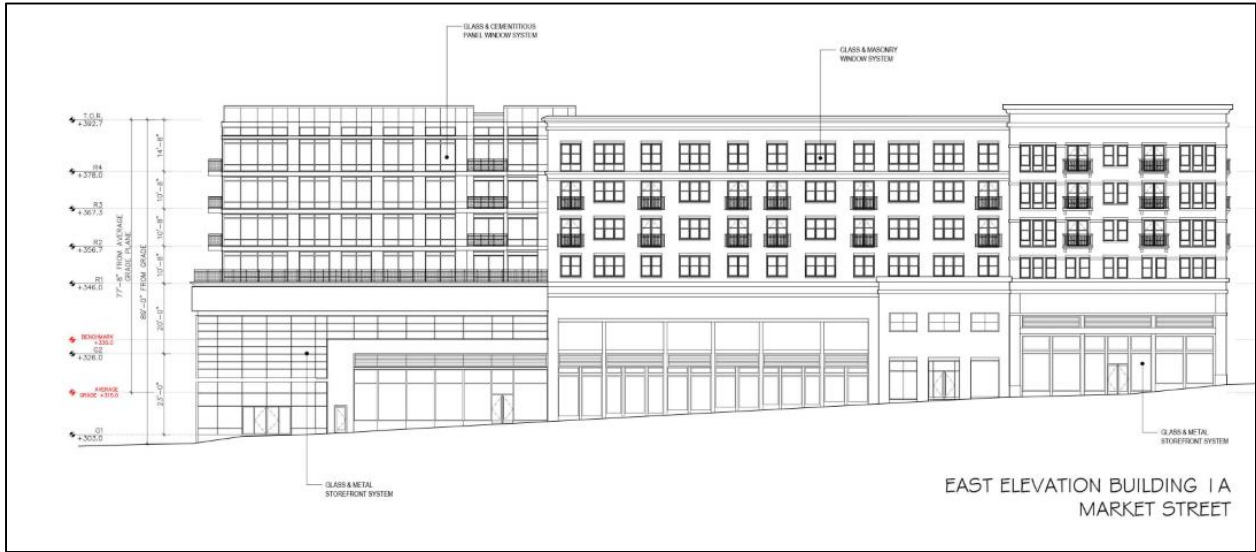


Figure 8-Building 1A, East Elevation



Figure 9-Building 1B, West Elevation

Open Space & Amenities

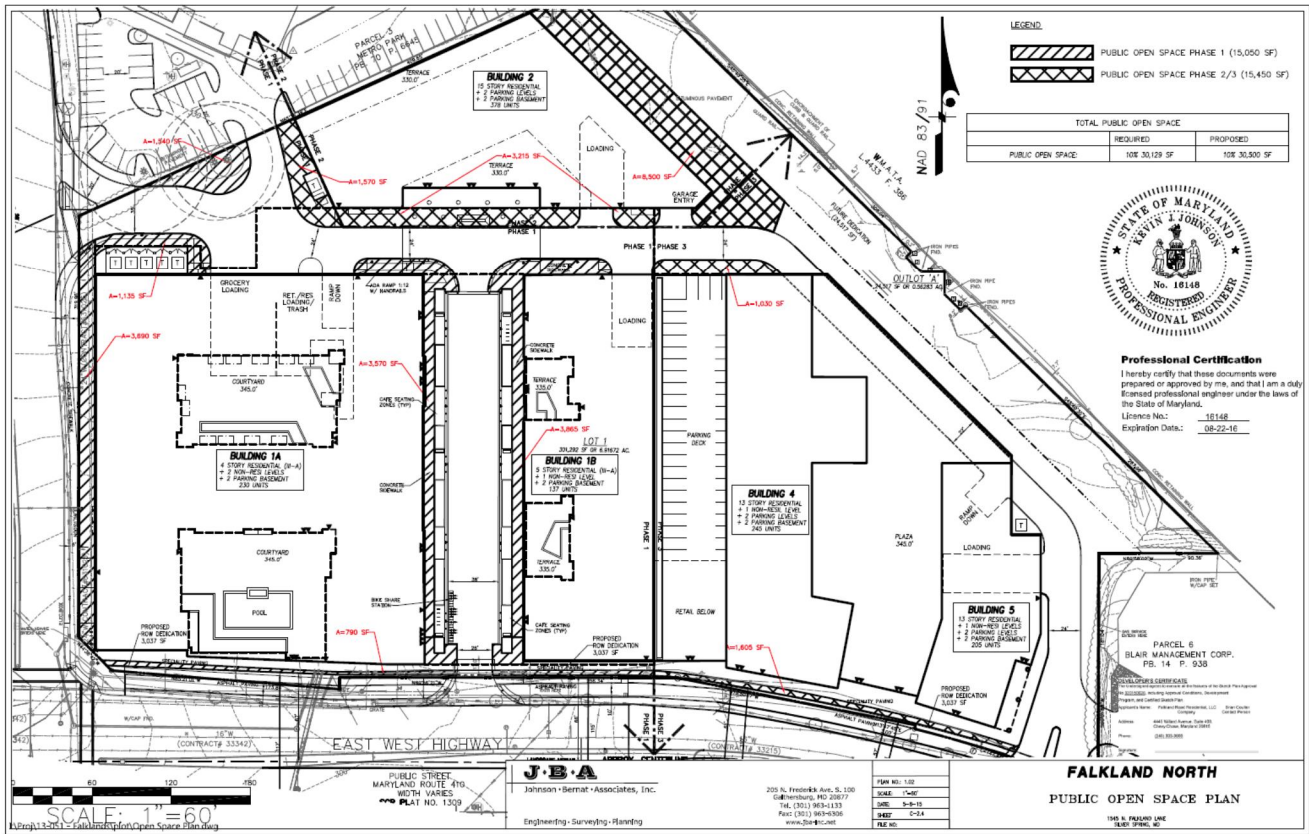


Figure 10-Open Space Plan

The proposed public open space consists primarily of sidewalks along the exterior and interior streets. An important component of the project is Market Street, which will be provided in Phase 1. Market Street is the retail and pedestrian center of the Falkland North development, with a particular focus on retail storefronts and the public realm to create an active, vibrant streetscape. As designed, Market Street will allow vehicular access off East West Highway during normal business hours, but through differentiating pavers and landscaping elements, vehicle drivers will know they have entered a pedestrian zone and will be forced to slow down. Vehicular access to the below grade parking garage will be located to the north of the site to allow Market Street to be closed to vehicles for special events like farmer's markets or fairs. During such special events, Market Street will be transformed into a pedestrian area and will serve as a gathering place for the surrounding community. The curbsless design of Market Street will create a retail and pedestrian promenade by prioritizing pedestrians and will allow them to walk freely from vendor to vendor when the street is closed to vehicular traffic.

The project includes a linear dog park that is approximately 7,500 square feet will be situated along the property's northeastern boundary, between Building 2 and the train tracks. The dog park will be open to the general public and will provide a highly desirable public amenity for all residents of Silver Spring.

Phase 1 of the project will provide a total of 18,240 square feet of public open space on-site (or 6% of the net lot area), in addition to the existing public open space on the rest of the site that will remain until subsequent phases of development. After completion of all phases, the project will provide a minimum of 10% or 30,500 square feet public open space on-site.

Additionally, although not counted as on-site public open space, the project will implement the restoration and beautification of the stream on the South Parcel, as required by the previously executed Declaration of Restrictive Covenants. The South Parcel stream has been adversely impacted by the erosion and run-off from the surrounding properties. To create an amenity for the existing residents and the Silver Spring CBD, the applicant proposes to restore this area prior to completion of the final phase of development.

The project also provides significant streetscape improvements along 16th Street and East West Highway. The café seating areas and ground floor retail uses fronting on East West Highway will further activate this pedestrian environment. The project also incorporates a shared use path along East West Highway that will connect to the existing sidewalk to the east of the property, until such time as the bike network is expanded in connection with future redevelopment.

The project will also provide amenity space for residents who live in the buildings, including indoor space, as well as passive and active outdoor recreation. These facilities will include a pool, fitness center, and outdoor plaza. The applicant's recreation analysis, as required by the Recreation Guidelines and the CR Zone, demonstrates that the project meets or exceeds the residential recreational/ amenity space requirement.

Circulation

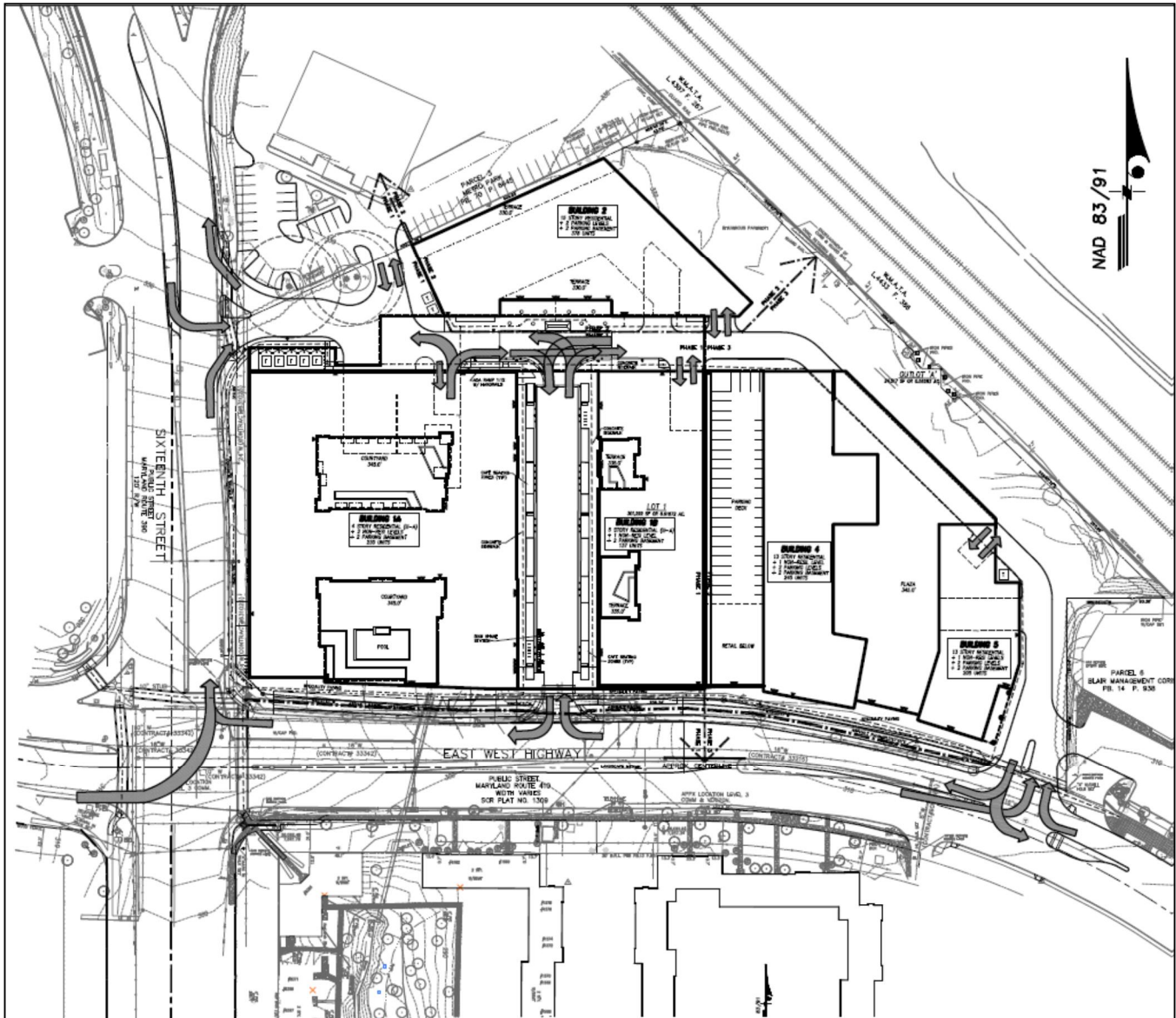


Figure 11-Circulation Plan

As illustrated above, vehicular access to the ultimate development will be provided at two locations on East-West Highway, with a full-movement signalized intersection at the southeast corner of the site and a west-bound right-in/right-out, and a limited movement access point off 16th Street at the northwest corner of the site. Interior circulation includes a loop road running behind the site between 16th Street and East-West Highway to serve as the primary access for residential and retail parking and loading and the Market Street retail drive between East-West Highway and the loop road. The initial development phase will build Market Street and the portion of the loop road between Market Street and 16th Street.

Phasing

The project will be implemented in three separate phases. The sketch plan and the preliminary plan encompass the entire project, but the site plan is only for Phase 1 of the project.

Phase 1 consists of two mixed use buildings, Building 1A and Building 1B, which will be connected by an underground parking garage. The private driveway dubbed “Market Street” will be constructed between the two buildings. The development in Phase 1 consists of 368 dwelling units and 96,000 square feet of retail and commercial uses.

Phase 2 will consist of Building 2, which will contain up to 403 dwelling units and up to 8,000 square feet of retail and commercial uses. Staff recommends that the south parcel stream restoration begin after half of the units (625) are under construction, placing it in this phase.

Phase 3 will consist of buildings 4 and 5, which will contain up to 479 dwelling units and up to 16,000 square feet of retail and commercial uses. Phase 3 includes construction of the new site entrance at the eastern-most point of the property’s East West Highway frontage, which will be a new signalized intersection.

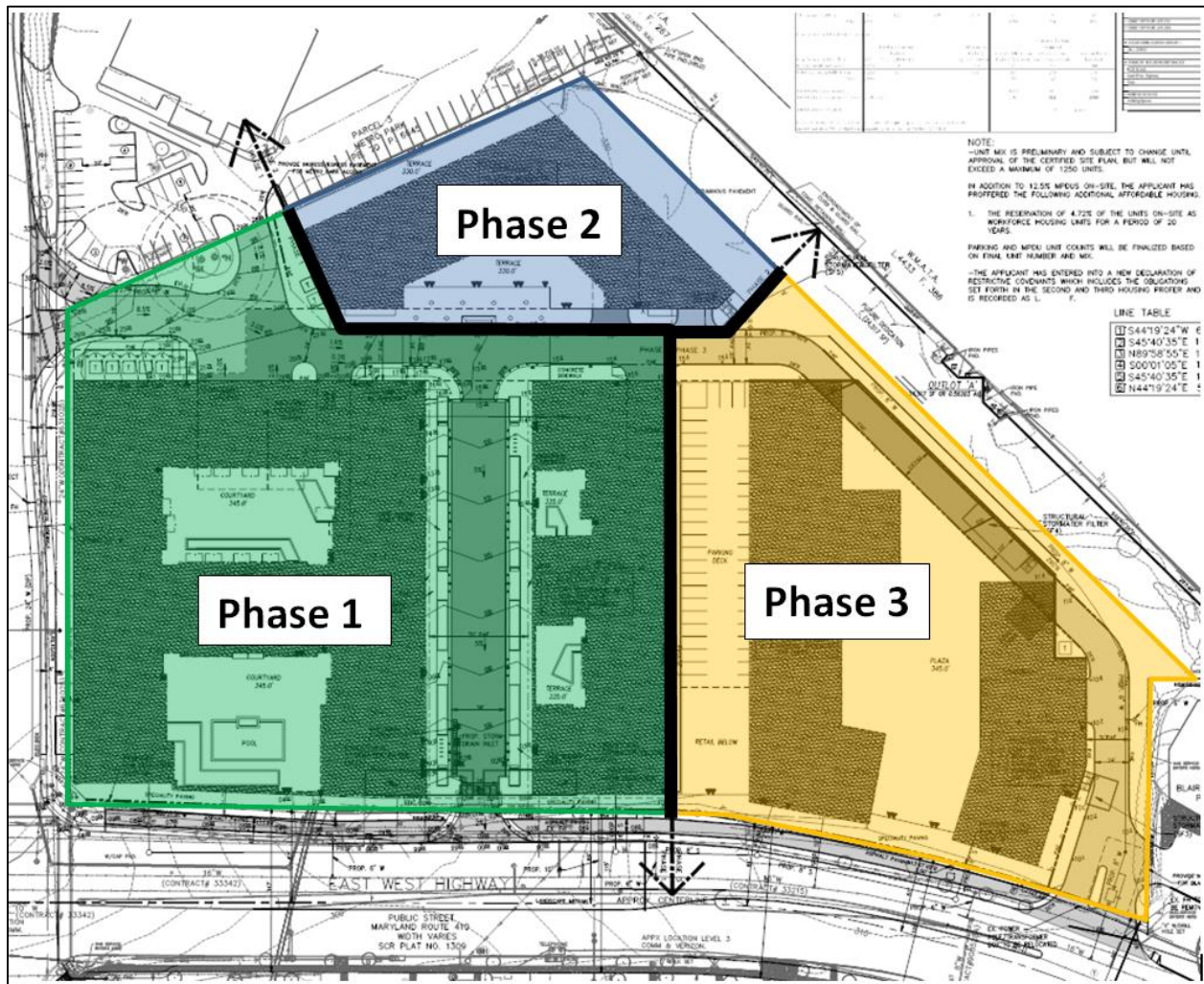


Figure 12-Proposed Phasing Plan

Restrictive Covenant

As mentioned above, the applicant of the previous project entered into a Declaration of Restricted Covenant with M-NCPPC specifying certain proffers and expectations incumbent upon the submission of a revised proposal. The applicant of the current project wishes to amend certain provisions in the Proposed Development

Commitments portion of the restrictive covenant. The proposed changes are shown in Attachment C. The significant changes are as follows:

Proposed Development Commitments

3. A number of units equal to 4.72% of the final number of total units on the North Parcel shall be subject to the County’s Workforce housing program for 20 years and located in existing buildings on the South and West Parcels. The Workforce Housing Units shall be designated prior to issuance of the Use and Occupancy certificates for each phase on the North Parcel in proportion to the total number of units in the respective North Parcel phase. The Workforce Housing Units on the South and West Parcels must include the same proportion of one bedroom units and two bedroom units as provided in the market rate units on the South and West Parcels.

~~11. Each residential or mixed-use residential building containing residential units shall contain the following minimum unit mix: 10% efficiency, 10% one-bedroom, 10% two-bedroom, and 7.5% three-bedroom. Irrespective of the ultimate residential mix, the MPDUs shall contain at a minimum 12.5% three-bedroom units, the Workforce Housing Units shall contain at a minimum 13.5% three-bedroom units, and the market rate units shall contain at a minimum 2.3% three-bedroom units. The bedroom mix of the remaining efficiencies, one, and two-bedroom MPDU and Workforce Housing Units must be in proportion to the efficiencies, one, and two-bedroom market rate units in compliance with Chapter 25A and 25B, as determined by MCDHCA.~~

The proposed changes to item 3 will ensure that the proposed workforce housing units will be delivered along with the project phases and will reflect the existing unit mix. The proposed change to item 11 will reduce the total number of three-bedroom units from 94 to 52, in order to ensure that the project is economically viable. Staff supports the proposed changes to the Restrictive Covenant.

Community Outreach

The applicant has complied with all submittal and noticing requirements. As of the date of this staff report, staff has not received any correspondence regarding the application.

SECTION 5: SKETCH PLAN ANALYSIS AND FINDINGS

The purpose of a Sketch Plan is to identify general land uses, development intensity, and public benefits for the optional method of development in the CR, CRT, EOF or LSC Zones. The Sketch Plan is intended to be conceptual in nature with an emphasis on: building densities; massing; heights and anticipated uses; the locations of open and public use spaces; the general circulation patterns for all modes of transportation; an estimated range of peak hour trips; and relationships between existing or proposed adjacent buildings and rights-of-way. Details of the proposed development are determined during Preliminary and Site Plan review.

Section 59-7.3.3.E of the Zoning Ordinance states: “To approve a sketch plan, the Planning Board must find that the following elements are appropriate in concept and appropriate for further detailed review at site plan. The sketch plan must:”

1. *meet the objectives, general requirements, and standards of this Chapter;*

As conditioned, the sketch plan meets the development standards of Section 59-4.5.4, as shown in Table 1, Sketch Plan Project Data Table.

Table 1-Sketch Plan Project Data Table			
Section	Development Standard	Permitted/ Required	Proposed
59 – 4	Gross Tract Area (sf)	n/a	425,443
4.5.4.B.2.b	Density CR3.0, C0.75, R3.0, H145T Commercial FAR/GFA Residential FAR/GFA TOTAL FAR/GFA	0.75/319,082 3.0/1,276,329 3.0/1,276,329	0.28/120,000 2.72/1,156,329 3.0/1,276,329
4.5.4.B.2.b	Building Height (feet) CR3.0, C0.75, R3.0, H145T	145	145
4.5.4.B.3	Minimum Setback From R.O.W.	0'	0'
4.5.4.B.1	Open Space Public Open Space (%/sq. ft.)	10/30,129	10/30,500
6.2	Parking (spaces)⁴ Residential and non-residential uses	911-2,380	1,179

The intent of the CR zone is to:

- a) *Implement the recommendations of applicable master plans.*

As discussed in Finding 2 below, the project substantially conforms to the recommendations of the Sector Plan. The project responds to the Sector Plan's main goals, including revitalizing the Silver Spring CBD and promoting sustainable pedestrian- and transit-oriented development. Specifically, the project provides a desirable mix of residential and commercial uses, public open space and amenities, as well as significant improvements to the pedestrian environment.

- b) *Target opportunities for redevelopment of single-use commercial areas and surface parking lots with a mix of uses.*

The subject property is currently improved with low-rise garden apartment buildings that were constructed in the mid-1930s and associated surface parking. The project will redevelop this single-use property with a modern, mixed-use development with structured below-grade parking. In total, the project will provide up to 1,250 additional residential dwelling units and 120,000 square feet of commercial uses in close proximity to transit and other essential services.

- c) *Encourage development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities, where parking is prohibited between the building and the street.*

⁴ The final number of parking spaces may be adjusted between the minimum and maximum allowed under Section 6.3 of the Zoning Ordinance at the time of building permit based on final unit count and/or bedroom mix.

The project provides a mixed-use, transit-oriented development to meet the needs of workers, shoppers, and residents of the CBD. The residential component of the project was specifically designed to include a broad spectrum of unit types, and to provide diverse housing opportunities. The ground floor commercial space provides opportunities for various businesses to operate within the CBD, including a potential full-service grocery store, which will support residents and workers in the CBD.

The project will provide new residential units and employment opportunities in close proximity to the Silver Spring Metro station. The location of these uses within 800 feet of the Metro will encourage utilization of mass transit for work trips. Additionally, the streetscape improvements along East-West Highway will promote this important pedestrian connection between the residential uses just outside the CBD and the existing commercial and office uses within the CBD.

No parking will be provided between the buildings and the street.

- d) *Allows a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods.*

The project provides a context-sensitive design and will complement the surrounding uses – the taller buildings are located to the rear of the subject property, adjacent to the more intense CR-zoned properties, and the mid-rise buildings have been located closer to the intersection of East-West Highway and 16th Street to provide a transition to the lower-density historic garden apartments located on the South and West Parcels.

- e) *Integrate an appropriate balance of employment and housing opportunities.*

The project will provide significant housing opportunities and promote economic diversity. The project will provide up to 157 MPDUs and the applicant will retain up to 59 WFHUs in the existing historic buildings on the South and West Parcels. The proposed residential development will provide additional opportunities for those who work in the CBD to live in close proximity to their place of employment.

The non-residential component of the project will provide necessary services for the existing and future residents of the subject property. The various commercial uses, potentially including a full-service grocery store, will also provide employment opportunities in close proximity to Metro.

- f) *Standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.*

As discussed in finding 6.g below, the project will provide the required public benefits from a minimum of four categories to achieve the desired incentive density above the standard method limit.

In addition to meeting the intents of the CR zone, the sketch plan meets the standards of approval for retail establishments greater than 50,000 square feet:

Retail/service establishments over 50,000 square feet are permitted as a limited use in the CR Zone. The potential future grocery store will be up to 62,000 square feet and will satisfy the additional standards for approval, as required in Section 3.5.11.B.2.a.iv. The potential grocery store will be located on the 2nd floor of

building 1A, with ground-floor retail below and residential above. Parking for the proposed grocery store will be accommodated in an at-grade and partial below-grade parking garage. The exterior façade has been designed to incorporate the grocery store, such that, if a grocery store does not occupy the 2nd floor space the 2nd floor could seamlessly be converted into residential dwelling units. Access to the potential grocery store will be via an at grade entrance on Market Street or East West Highway, and access to the ground-floor retail will be provided from Market Street and East West Highway. For all of these reasons, Sections 3.5.11.B.2.a.iv(a) – (f) are satisfied.

The sketch plan meets the general requirements of the Chapter 59 as follows:

i. Section 4.1.7.C.2 Building Height Measurement

Under Section 4.1.7.C.2, the building height of each street-fronting building must be measured from the approved curb grade opposite the middle of the front of each building. Because Building 2 is set back more than 35 feet from the street, its height must be measured instead from the average elevation of the finished ground surface. The applicant’s proposal to measure the building heights for all of the buildings from a single reference point at the northwest corner of the subject property did not comply with Section 4.1.7.C.2. Condition No. 3 requires the buildings to be measured in compliance with Section 4.1.7.C.2.

ii. Division 6.1. Site Access

A network of private drives for the two Phase 1 buildings provides well-integrated vehicular access from East West Highway and 16th Street to entrances to the underground parking garage. “Market Street” will be constructed with the Phase 1 development and will appropriately function for vehicular access for the buildings.

iii. Division 6.2. Parking, Queuing, and Loading

The project’s two Phase 1 mixed-use buildings will share an underground parking garage for adequate off-street parking.

iv. Division 6.3. Open Space and Recreation

The overall project has a 10 percent public open space requirement, which yields a requirement of 30,129 square feet of open space. The project proposes to provide 30,500 square feet of public open space, of which 18,240 square feet will be provided in Phase 1.

The Phase 1 development meets the active and passive recreation space required by the zone. The proposed development will provide the following on-site recreation facilities: Indoor community space, swimming pool, indoor fitness facility, picnic/sitting areas, a bike system, and a pedestrian system.

The development meets the required supply of recreation facilities based on the calculation methods in the M-NCPPC Recreation Guidelines. The Phase 1 development will provide adequate, safe, and efficient recreation facilities to allow residents to lead an active and healthy life.

v. Division 6.4. General Landscaping and Outdoor Lighting

Landscaping and lighting, as well as other site amenities, will be provided to ensure that these facilities will be safe, adequate, and efficient for year-round use and enjoyment by residents and visitors. The application provides streetscape along the new private drive (“Market Street”) and will transform existing streetscape along the frontage on 16th Street and East West Highway, with new street trees, improved sidewalks, and street lighting. Site furnishings will be integrated within the site to create a unique and interesting place and ensure accessibility and comfort.

2. *substantially conform with the recommendations of the applicable master plan;*

The subject property is within the boundaries of the *Silver Spring Central Business District and Vicinity Sector Plan*. The Sector Plan contains six themes that guide the vision for the Silver Spring CBD: (1) a transit-oriented downtown, (2) a commercial downtown, (3) a residential downtown, (4) a civic downtown, (5) a green downtown, and (6) a pedestrian friendly downtown.

1. **TRANSIT-ORIENTED DOWNTOWN.** The Sector Plan's land use and development recommendations strive to balance the needs of commuter and local traffic, of walkers and drivers, and to maximize the investment in Silver Spring's transit infrastructure.

The project, by virtue of its location within the CBD, is convenient to various public transportation resources including the Silver Spring Metro and MARC station and various bus lines and the future Silver Spring Purple Line station. The project also provides streetscape improvements, a new shared use path along East West Highway and is in close proximity to the Capital Crescent Trail as a benefit to walkers and bicyclists. The proposed private internal drives provide safe and efficient on-site circulation for both pedestrian and vehicles. Given the nature of the proposed development and the location of the subject property, it is reasonable to anticipate that residents and visitors will make use of multiple modes of transportation when accessing the property.

2. **COMMERCIAL DOWNTOWN.** Silver Spring's location, infrastructure, and position in the metropolitan area market will continue its role as an employment center. New retail development will serve the local community with a mix of chain and independent businesses offering convenience and specialty shopping, restaurants, and entertainment.

The project provides for the development of up to 120,000 square feet of retail use that will provide opportunities for various types of commercial uses. The ground-floor retail and restaurant uses provided for, in combination with a possible large grocery store, will create a diverse offering that will serve the surrounding residential uses, as well as the existing and future residents of the project.

3. **RESIDENTIAL DOWNTOWN.** The Sector Plan seeks to create a mix of housing choices, including low-rise high-density apartments and townhouses, supported by parks, shopping, cultural, civic, and employment uses with transit and Beltway access to make a convenient and thriving community.

The project will provide greater housing opportunities in the Silver Spring CBD and will allow residents to live near their work. The project provides for the development of up to 1,250 new residential units in the CBD, within walking distance of the Silver Spring Metro Station and several bus routes. These new residences will help support the existing commercial and office uses in the CBD, as well as the non-residential component of the project.

The project contains diverse housing opportunities by including a variety of market rate unit sizes and layouts to facilitate the availability of new housing in a range of types and rents within walking

distance of the Metrorail and Metro Bus stops. The project provides both mid-rise and high-rise multi-family residential development. This, in combination with the adjacent garden style apartments, creates a mix of housing choices. Because the project includes a significant number of MPDUs and other affordable housing units, it will facilitate economic diversity located near transit and important services.

4. CIVIC DOWNTOWN. The Sector Plan views civic facilities as partners in economic revitalization. New and regenerated facilities will draw people downtown, returning it to the center of community life and creating opportunities for economic and social connections.

The on-site public open space and amenities respond to the need for community facilities, including civic spaces, within the CBD. The project facilitates a variety of opportunities for people to gather and socialize, including outdoor café seating areas, pedestrian walkways, benches and private courtyards. The design of the public open space and amenities, including the streetscape improvements and Market Street, will appeal to a diverse population seeking varied experiences.

5. GREEN DOWNTOWN. The Sector Plan envisions shaded, tree-lined streets and well-placed green parks and plazas, creating a comprehensive system of open spaces that provide economic, environmental, and aesthetic benefits through downtown.

A minimum of 10% public open space will be provided on-site after completion of all phases of development. The project will provide diverse public open spaces that collectively create a vibrant and active pedestrian environment. In connection with phase two of the proposed development, the applicant will also restore the stream on the South Parcel. This stream restoration and beautification will provide an important amenity for residents and for the Silver Spring CBD.

6. PEDESTRIAN FRIENDLY DOWNTOWN. The Sector Plan encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. They will become a defining feature downtown, and will support activity, creating the setting for community.

The combination of residential and ground-floor commercial uses on the subject property will serve to activate the streets. The project has been designed to create a space that allows for internal vehicular circulation but favors the pedestrian experience. As such, streetscape improvements, in accordance with the Silver Spring Streetscape Plan, will be implemented to create a more attractive pedestrian environment. Market Street will be lined with trees and on-street parking to promote safe and efficient internal circulation of vehicles, pedestrians and bicyclists.

3. *satisfy any development plan or schematic development plan in effect on October 29, 2014;*

The Sketch Plan is not subject to a development plan or schematic development plan.

4. *achieve compatible internal and external relationships between existing and pending nearby development;*

The project will provide diverse housing opportunities, which will bring the new residents that are necessary to achieve a "critical mass" of activity in this section of the CBD, and significant commercial and retail development on this property. The project has been sensitively designed to ensure that it is physically compatible with, and not detrimental to, existing and future development surrounding the subject property. The property has been designed at an appropriate scale for the surrounding area, with

mid-rise buildings located closer to the historic garden apartments of the Falkland Chase South Parcel and West Parcel, and higher buildings located closer to the more intense CR-zoned properties.

5. *provide satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading;*

The project will significantly improve the pedestrian and bicyclist access and circulation within the CBD. Streetscape improvements along the subject property's frontage on 16th Street and East-West Highway and the proposed private internal drives will provide for a safer and more efficient pedestrian environment. In addition, the 16th street frontage will include an off-street shared-use path, which will improve bicycle circulation.

The project will also improve vehicular circulation by minimizing curb cuts along East West Highway. Adequate parking will be provided on-site to accommodate all users of the property, and access to parking and loading has been located to minimize pedestrian-vehicular conflicts.

6. *propose an outline of public benefits that supports the requested incentive density and is appropriate for the specific community;*

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

- a. Take into consideration “the recommendations of the applicable master plan” by providing a project that is transit-oriented, includes commercial and residential development, includes civic gathering spaces, includes environmental enhancements, and is pedestrian friendly;
- b. Meet the *2012 Commercial/Residential Zones Incentive Density Implementation Guidelines (CR Guidelines)* by providing the proper calculations and criteria for each public benefit;
- c. Meet “any design guidelines adopted for the applicable master plan area” by providing an attractive pedestrian environment with short blocks and defined streets with building edges, public open space, and safe pedestrian-friendly connections;
- d. Are appropriate for “the size and configuration of the site” by improving the existing configuration of surface parking lots and replacing them with structured parking to allow for public use and public open spaces close to transit;
- e. Adequately address “the relationship of the site to adjacent properties” by designing the buildings at an appropriate scale for the surroundings with heights and areas of open space that complement the existing character of the area;
- f. Consider “the presence or lack of similar public benefits nearby” through the provision of affordable housing, environmental benefits, public open space, and pedestrian connections, all of which are currently needed in this area; and
- g. Provide “enhancements beyond the elements listed in an individual public benefit that increase public access to, or enjoyment of, the benefit” which will be developed and assessed during preliminary plan and site plan reviews.

For the proposed development the zoning code requires 100 points in four categories. Although at time of Sketch Plan, only the categories need be approved, Table 2 shows both the categories and points for the public benefits recommended at Sketch Plan to demonstrate the project’s ability to meet the requirement to provide sufficient benefit points.

Table 2- Sketch Plan Public Benefits Calculations

Public Benefit	Incentive Density Points		
	Total Points Possible	Requested	Recommended
4.7.3.A: Major Public Facilities	70	3.7	3.7
4.7.3.B: Transit Proximity	40	40	40
4.7.3.C: Connectivity and Mobility			
Advanced Dedication	30	8	8
Minimum Parking	10	7.73	7.73
Transit Access Improvement	20	10	10
Wayfinding	10	5	5
4.7.3.E: Quality of Building and Site Design			
Architectural Elevations	20	10	10
Exceptional Design	10	5	0 - 5
Structured Parking	20	15.3	15.3
4.7.3.F: Protection and Enhancement of the Natural Environment			
Building Lot Termination (BLT)	30	9	9
Cool Roof	10	10	10
Habitat Preservation and Restoration	20	12.2	12.2
Vegetated Roof	15	5	5
Vegetated Wall	10	10	10
TOTAL	100	150.9	145.9 - 150.9

Major Public Facilities

In accordance with the Sector Plan, the project will construct an off-road shared use path along the East West Highway frontage of the subject property. In addition, the project will provide a bike share station at the entrance to the subject property on Market Street.

Transit Proximity

The subject property is located within ¼ mile of the entrance to the Silver Spring Metro Station, which allows the development to be eligible for Level 1 transit as defined in the Zoning Ordinance. Staff recommends the full 40 points as provided in the Zoning Ordinance for CR-zoned properties that are within ¼ mile of a Metrorail station.

Connectivity and Mobility

Advanced Dedication: The application proposes to place in reservation 24,517 square feet for future dedication to the Purple Line.

Minimum Parking: The application proposes fewer than the maximum number of allowed parking spaces. The maximum number of allowed spaces is 2,380, but the application will provide 1,179 spaces.

Transit Access Improvement: The project will improve sidewalks and accessibility ramps at the northwest, southwest, and southeast corners of the intersection of 16th street and East-West Highway. These improvements are located within ½ of the project site and are not otherwise required improvements along the subject property’s frontage.

Wayfinding: In conjunction with the shared use path on East West Highway and other public spaces on the subject property, wayfinding signs will be installed to direct pedestrians and bicyclists to the Metrorail station and other points of interest.

Quality of Building and Site Design

Architectural Elevations: The project buildings are designed to provide ground-floor transparency. The ground-floor façade is primarily glass, readily allowing views into and out of the building. Numerous doors provide access into the retail spaces from East West Highway and Market Street. The certified site plan will document these and other design elements and substantial conformance with the building design will be required of the applicant.

Exceptional Design: Addressing “Quality Building and Site Design”, Section 59.4.7.3.E of the Zoning Ordinance states:

High quality design is especially important in urban, integrated-use settings to ensure that buildings and uses are visually compatible with each other and adjacent communities and to provide a harmonious pattern of development. Due to increased density in these settings, buildings tend to be highly visible and high quality design helps attract residents, patrons and businesses to these areas. *Location, height, massing, facade treatments and ornamentation of buildings all affect sense of place, orientation and the perception of comfort and convenience.* The quality of the built environment affects light, shadow, wind and noise, as well as the functional and economic value of property. [emphasis added]

For the exceptional design public benefit, the Zoning Ordinance allows up to 10 points for “building or site design whose visual and functional impacts exceptionally enhance the character of a setting” per the paragraph above. To achieve points for this benefit, the *Implementation Guidelines* set criteria which the project must meet (p.39):

Incentive density of 5 points is appropriate for development that meets at least four [emphasis added] of the following criteria and 10 points for development that meets all of them. Building or site design that:

- provides innovative solutions in response to the immediate context
- creates a sense of place and serves as a landmark
- enhances the public realm in a distinct and original manner
- introduces materials, forms, or building methods unique to the immediate vicinity or applied in a unique way
- uses design solutions to make compact, infill development living, working, and shopping environments more pleasurable and desirable on a problematic site
- integrates low-impact development methods into the overall design of the site and building, beyond green building or site requirements.

The project arguably “uses design solutions to make compact, infill development living, working, and shopping environments more pleasurable and desirable on a problematic site” and, in contrast to the single-use automobile-oriented development surrounding the site, will provide a mixed-use node that will create a sense of place and serve as a landmark.

However, in Downtown Silver Spring, the creation of a street and block system with buildings that are oriented to clearly define a pedestrian mixed-use place, while most desirable, is not an innovative solution

in response to the immediate context, nor does it do so in a unique or especially distinct and original manner. Though the proposed architecture represented in the concurrent site plan application includes references to the surrounding context, the “location, height, massing, facade treatments and ornamentation of buildings” do not present an innovative solution in response to the immediate context.

As noted above, the Zoning Ordinance recognizes that “high quality design is especially important in urban, integrated-use settings to ensure that buildings and uses are visually compatible with each other and adjacent communities and to provide a harmonious pattern of development.” This development has the “good bones” of streets and blocks and a pedestrian-oriented site design and mix of uses. As the applicant prepares future site plan applications for the phased development of this site, those plans should strive to include exceptional design that meets the requirements of the *Implementation Guidelines*.

Structured Parking: The applicant requests 15.3 points for structured parking consisting of 527 above-grade spaces and 639 below-grade spaces. This incentive is granted on a sliding scale based on the percentage of spaces provided above and below grade.

Protection and Enhancement of the Natural Environment

Building Lot Termination: The applicant must purchase BLT easements in an amount equal to 7.5% of the incentive density floor area. One BLT must be purchased for each 31,500 square feet of gross floor area. With these parameters, the applicant must purchase 2.53 BLTs.

Cool Roof: All roof areas not covered by green roof or mechanical equipment will be covered by a cool roof having a minimum solar reflectance index of 75.

Habitat Preservation and Restoration: The off-site stream area located on the Falkland South Parcel will be improved and restored as part of the project. Based the size of the area to be restored (40,000 square feet), the applicant is request 12.2 points.

Vegetated Roof: The applicant requests 5 points for providing vegetated roofs with a soil depth of at least 4 inches and covering at least 33% of the total roof excluding space for mechanical equipment.

Vegetated Wall: A vegetated wall, visible from 16th Street, will be placed on the west side of Building 1A, covering an area of 696 square feet. The green screen is located on a blank wall, which has an area of 999 square feet. The green screen will cover 70% of the blank wall. The green screen will be comprised of a three-dimensional welded wire trellis system that will be attached to the building face. Two different species of vine will be planted on the green screen with varying bloom times. American wisteria is a deciduous vine with purple blooms that emerge during early summer. Crossvine is an evergreen climbing vine with red and yellow blooms that emerge in early spring.

7. *establish a feasible and appropriate provisional phasing plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.*

As described earlier, the proposed development may be built in three phases. Phase 1 consists of two mixed use buildings, Building 1A and Building 1B, which will be connected by an underground parking garage. The private driveway dubbed “Market Street” will be constructed between the two buildings. The development in Phase 1 consists of 368 dwelling units and 96,000 square feet of retail and commercial uses. Phase 2 will consist of Building 2, which will contain up to 403 dwelling units and up to 8,000 square feet of retail and commercial uses. Phase 3 will consists of buildings 4 and 5, which will contain up to 479 dwelling units and up to 16,000

square feet of retail and commercial uses. Phase 3 includes construction of the new site entrance at the eastern-most point of the property’s East West Highway frontage, which will be a new signalized intersection.

Table 3 shows the public benefits Staff recommends by each phase of development:

Table 3- Phased Public Benefits			
	Total Sketch Plan Points	Phases	
		Phase 1	Phases 2 and 3
Major Public Facilities	3.7	1.9	1.8
Transit Proximity	40	20	20
Connectivity and Mobility			
Advanced Dedication	8	4	4
Minimum Parking	7.73	3.35	4.38
Transit Access Improvement	10	10	0
Wayfinding	5	2.5	2.5
Quality of Building and Site Design			
Architectural Elevations	10	5	5
Exceptional Design	0 -5	0	0 -5
Structured Parking	15.3	9.35	5.95
Protection and Enhancement of the Natural Environment			
Building Lot Termination	9	3	6
Cool Roof	10	5	5
Habitat Preservation & Restoration	12.2	0	12.2
Vegetated Roof	5	2.5	2.5
Vegetated Wall	10	10	0
TOTAL POINTS	145.9 - 150.9	76.6	69.3 – 74.3

SECTION 6: PRELIMINARY PLAN ANALYSIS AND FINDINGS

Sector Plan Conformance

As discussed in the Sketch Plan section of this report, the application substantially conforms to the *Silver Spring Sector Plan*. The application complies with the land use recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan.

Transportation

Access to the Project for all transportation modes is via 16th Street and East-West Highway. Pedestrian and bicycle access to the property will be maintained along the property frontage sidewalks and public roadways, as well as a proposed ten-foot-wide shared use path along the East West Highway Frontage. Parking is proposed to be contained within structured parking facilities within and/or below the buildings.

Access, Parking, and Public Transportation

The site currently has two vehicular curb cuts for access on East-West Highway (MD 410). These access points are configured to operate as a one-way internal street, “Falkland Lane,” within the site. The eastern access

point serves as a full-movement ingress driveway and the western access point serves as a right-out only egress driveway. Falkland Lane currently carries one lane of vehicular traffic and accommodates on-street parking.

The applicant proposes a phased approach to improve future vehicular access and circulation as development on the site progresses. In its ultimate condition, the proposed development will add a full-movement traffic signal on East-West Highway, at the eastern corner of the subject property. That traffic signal will provide shared access with the adjacent shopping center, also referred to as the potential future Metro Plaza development (12009038A, which is currently under review). The first phase of the site improvements includes shifting the existing egress (western) driveway approximately 65 feet east and constructing a new internal driveway from East-West Highway to a new unsignalized intersection on 16th Street. The new intersection is designed to permit right-turning movements out of the site, onto northbound 16th Street, as well as both northbound right-turns and southbound left-turns into the site from 16th Street. In the third (and final) phase, the existing ingress (eastern) driveway on East-West Highway will be closed and vehicular traffic directed to the new signalized entrance, which will become the primary access point for the site.

Loading spaces are proposed for each building and will be shared between the residential and retail uses for the respective building, exclusive of any grocery store on the subject property. In the event a grocery is constructed on-site, a separate loading space will serve the grocery. Access to the loading spaces will occur via the proposed internal drive network and will not require queuing on adjacent public roadways. The proposed development will provide 1,179 vehicular parking spaces within structured garages internal to the site. Additionally, 179 bicycle parking spaces will be provided in the following configuration: 164 long-term weather protected spaces and 15 short-term spaces adjacent to retail and residential lobby uses.

The immediate area is well served by transit that includes the Red Line Silver Spring Metrorail Station, Metrobus, RideOn, and the Silver Spring VanGo Circulator. Future transit in the area includes a proposed Purple Line station at the existing Metrorail Redline station. Specific transit routes near the subject property include:

1. RideOn Bus Routes 1, 2, 3, 4, 5, 11, 12, 13, 18, and 28
2. WMATA Metrobus Routes J5, Q1, Q2, Q4, S2, S4, Y5, Y7, Y8, Y9, Z2, Z6, Z8, Z9, Z11, Z13

Master Plan Roadways and Pedestrian/Bikeway Facilities

The following summarizes recommendations included in the 2000 Approved and Adopted *Silver Spring CBD Sector Plan* and the 2005 *Countywide Bikeways Functional Master Plan*:

1. East-West Highway (MD 410): a Major Highway with master planned shared use path bicycle facilities located along the southern Site frontage; a minimum master planned right-of-way of 118 feet near 16th Street and 110 feet along the remainder of the site frontage.
2. 16th Street (MD 390): a Major Highway with a master planned right-of-way of 120 feet.

Sector-Planned Transportation Demand Management

As a mixed-use development within the Silver Spring Transportation Management District (TMD), the applicant is required to enter into a Traffic Mitigation Agreement to participate in the Silver Spring TMD.

Adequate Public Facilities

A traffic study (dated August 2014) was submitted for the subject application per the *Local Area Transportation Review (LATR)/Transportation Policy Area Review (TPAR) Guidelines* since the proposed development was estimated to generate more than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

Trip Generation

A site trip generation summary for the proposed development, provided in Table 4, shows that the project will generate 369 peak-hour trips during the weekday morning peak period and 608 peak-hour trips during the weekday evening peak period. When compared to existing uses, the proposed development will result in an increase of 328 peak-hour trips during the morning peak period and 549 peak-hour trips during the evening peak period.

**TABLE 4
SUMMARY OF SITE TRIP GENERATION**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Existing Development (Credit)						
182 Dwelling Units ¹	(8)	(33)	(41)	(40)	(19)	(59)
Proposed Development						
1,250 Dwelling Units ¹	61	245	306	251	107	358
120,000 Square Feet General Retail ²	32	31	63	125	125	250
Total Net New Peak Hour Trips	85	243	328	336	213	549

¹ Based on Table 1-4, 2013 LATR Guidelines

² Based on Table 3-2, 2013 LATR Guidelines

Source: Kimley Horn & Associates, Inc. Traffic Study dated August 2014

LATR Review

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis for the weekday morning and evening peak-hour periods, presented in Table 5, shows that the total (Build) condition will remain within the policy area congestion standard of 1,800 CLV. Based on the analysis presented in the traffic study, the subject application will satisfy the LATR requirements of the APF test.

**TABLE 5
SUMMARY OF CAPACITY CALCULATIONS**

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
East-West Hwy (MD 410)/ Rosemary Hills Drive	1091	1002	1140	1051	1152	1065
East-West Hwy (MD 410)/ 16 th Street (MD 390)	1473	1409	1559	1506	1574	1523
East-West Hwy (MD 410)/ Colesville Road (MD 384)	1014	1039	1254	1276	1305	1326
East-West Hwy (MD 410)/ NOAA/ Shopping Center	451	565	507	650	538	670
16 th Street (MD 390)/ Spring Street	828	766	895	855	910	955
16 th Street (MD 390)/ 2 nd Avenue	842	837	882	876	911	939
Spring Street/ 2 nd Avenue	613	904	799	1147	826	1247
Spring Street/ Georgia Avenue (MD 97)	1037	882	1222	1115	1239	1124
Colesville Road (MD 384)/ Georgia Avenue (MD 97)	1134	1047	1259	1206	1270	1216
Colesville Road (MD 384)/ 2 nd Avenue/ Wayne Avenue	667	672	821	767	823	816
16 th Street (MD 390)/ Colesville Rd/ Eastern Ave/ N. Portal Dr	1182	1123	1254	1175	1270	1195
16 th Street (MD 390)/ Shared Driveway	-	-	-	-	783	1040

Source: Kimley Horn & Associates, Inc. Traffic Study dated August 2014

TPAR Review

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

Other Public Facilities

Public facilities and services are available and will be adequate to serve the proposed development. The property is proposed to be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the property. The subject property is within the Einstein High School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required. Electrical, telecommunications, and gas services are also available to serve the property.

Compliance with Zoning Ordinance and Subdivision Regulations

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections. The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. As discussed in the Sketch Plan section of this report, the application substantially conforms to the *Silver Spring CBD Sector Plan*. The application complies with the land use recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the preliminary plan, the site is sufficiently large to efficiently accommodate the proposed mix of uses.

Under Section 4.5.4 of the Zoning Ordinance, the dimensional standards for the lots will be determined with approval of the subsequent site plans.

Environment

Environmental Guidelines

A revised Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) (420141190) for the subject property was approved on May 27th, 2014. The NRI/FSD identifies environmental features, conditions, constraints and forest resources on the subject property and within 100 feet of its perimeter. The subject property contains no forest, streams, buffers, or rare, threatened, or endangered species. However, significant and specimen sized trees are located within and adjacent to the project boundaries. The trees are generally scattered throughout and some are growing adjacent to the existing buildings. The site contains a current County champion tree – an 11-inch glossy hawthorn which is growing very near the building at the corner of 16th Street and East-West Highway. There is an ephemeral drainage channel located onsite which is not designated as a stream since there is no groundwater association; the channel only flows in direct response to a precipitation event. Therefore no stream valley buffer is assigned for this feature. A formal stream and buffer is located on the Falklands South Parcel on the opposite side of East-West Highway. The project is located within the lower main Rock Creek watershed which is designated as a Use I⁵ watershed.

Tree Save

The current County champion tree for the glossy hawthorn species (identified as tree “WW” on the forest conservation plan) is proposed to be relocated. The tree is large for its species but small enough that it could be transplanted with reasonable effort. The tree is growing very near an existing building and stairway to be demolished; the setting has limited the root spread on two sides of the tree and should facilitate its transplanting. The tree is proposed to be transferred to a location directly across the street on Falklands South Parcel. Additionally, there is another onsite hawthorn tree of the same species (identified as tree “XX” on the forest conservation plan) that is apparently larger than the current champion and will also be transplanted (to an onsite location).

Forest Conservation

The preliminary forest conservation plan addresses the entire Falkland North property and includes portions of the fronting rights-of-way which are being modified by the project. Although there is no existing forest on or near the subject property, an afforestation requirement of 1.25 acres is triggered by the associated forest conservation worksheet requirements. The afforestation plantings will be satisfied in an offsite forest conservation bank since there is no priority planting area present, and most of the onsite tree plantings must be designated toward satisfying the variance mitigation requirements (discussed below).

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

⁵ Use I:

WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

rare, threatened, or endangered species. The proposed project includes tree removals and disturbance within the CRZ of trees which are subject to the variance provisions for a number of reasons such as their size measuring 30 inches DBH or greater, because the affected trees are part of a historic site or due to the County champion status of one particular tree.

**TABLE 6
VARIANCE TREES ASSOCIATED WITH THE NORTH PARCEL**

Symbol	Botanical / Common Name	DBH	Condition	Status
*B	Pinus strobus / White Pine	30"	Good	To be removed
*C	Quercus rubra / Northern Red Oak	32"	Good	To be removed
*D	Removed	was 40"		Removed w/o documentation
*E	Liriodendron tulipifera / Tulip Poplar	38"	Good	To be removed
*F	Quercus rubra / Northern Red Oak	36"	Good	To be removed
*H	Liriodendron tulipifera / Tulip Poplar	42"	Good	To be removed
*J	Liriodendron tulipifera / Tulip Poplar	31"	Good	To be removed
*K	Acer negundo / Box Elder	32"	Good	To be removed
*L	Removed	was 35"		Removed w/o documentation
*M	Liriodendron tulipifera / Tulip Poplar	36"	Poor - canopy dieback and crack in trunk, hazardous	To be removed
*N	Liriodendron tulipifera / Tulip Poplar	44"	Poor - dieback, bark and surface root damage, hazardous	To be removed
*P	Quercus rubra / Northern Red Oak	39.5"	Good	To be removed
*Q	Quercus palustris / Pin Oak	37.5"	Good - climbing spur damage and stump cut branches	To be removed
*R	Pinus strobus / White Pine	36"	Good	To be removed
*U	Pinus strobus / White Pine	36"	Good - stump cut branches in the	To be removed
*V	Ulmus americana / American Elm	42"	Good	Right-of-Way Tree to be removed. Mitigation to be provided in Right-of-Way
*W	Quercus rubra / Northern Red Oak	48"	Fair - decay in upper trunk	To be removed, however, every effort will be made to retain this tree (55% CRZ impacted by construction), Mitigation plantings to be planted on Parcel 3
*X	Liriodendron tulipifera / Tulip Poplar	40"/18"	Good - heavy cover of English Ivy	To be removed
*Y	Liriodendron tulipifera / Tulip Poplar	31"	Good	To be removed
*CC	Removed	was 31"		Removed w/o documentation
*DD	Pinus strobus / White Pine	30.5"	Good	To be removed
*FF	Prunus serotina / Black Cherry	30.5"	Good	To be removed
*WW	Crataegus nitida / Glossy Hawthorn	10.5"	Good	To be transplanted

* Forest Conservation Variance Trees

**TABLE 7
VARIANCE TREES ASSOCIATED WITH THE SOUTH PARCEL**

Symbol	Botanical / Common Name	DBH	Condition	% CRZ Impacted	Status
*1	Quercus rubra / Northern Red Oak	31	Fair	1%	To remain
*3	Ulmus americana / Elm	38	Very poor	4%	To remain
*4	Tilia cordata / Linden	18	Good	65%	To be removed, however, every effort will be made to retain this tree using specialized construction techniques such as root protection matting, raised sidewalk, etc. (see Sheet 3) If unsuccessful, mitigation planting of one (1) 4.5" caliper tree to be planted on Southside Parcel 555
*15	Tilia cordata / Linden	15	Good	5%	To remain
*17	Prunus species / Ornamental Cherry	28	Fair	18%	To remain
*18	Tilia cordata / Linden	15	Good	10%	To remain
*19	Tilia cordata / Linden	16	Good	12%	To remain
*20	Tilia cordata / Linden	16	Good	20%	To remain

* Forest Conservation Variance Trees (located on Historic Parcel and/or greater than 30")

Although the Planning Board had previously approved a preliminary forest conservation plan and associated variance request for a similar level of removals and impacts, the findings were based on elements specific to the previous application, which are no longer applicable to the current project. Therefore the approval of new variance request is required. Additionally, the champion hawthorn tree is now proposed to be transplanted rather than removed.

A number of the trees associated with the project were removed because they were found to be hazardous due to extensive storm damage and/or decay. Since the trees were determined to be hazardous and the removal occurred in coordination with the forest conservation inspector, the appropriately removed trees are no longer subject to the variance and are therefore not included in the current request. However, there are also three trees that were part of the previous variance request that were removed at some point without staff coordination. Since no documentation regarding these trees could be provided upon staff inquiry, they are included in the current request for mitigation calculation purposes. Collectively there are 23 removals requested, 1 transplant, and 7 impacts, for a total of 31 subject trees. Although tree "XX" is large enough to be a contender for County champion, it is not subject to the variance since it is currently not a champion and does not meet any of the criteria of a variance tree.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. In addition to the required findings outlined below, the applicant has demonstrated that not granting the variance would result in an unwarranted hardship for the following reasons:

The site is located in the Silver Spring CBD near a Metrorail station and the Silver Spring Transit Center. The Sector Plan envisions placement of greater density in proximity to mass transit opportunities. Since the subject property is interspersed with subject trees, impacts and removal would be required of any notable redevelopment of the property. Furthermore, impacts and removals associated with the right-of-way modifications are necessary to satisfy the requirements of the State Highway Administration (MDSHA).

Variance Findings

The following determinations are based on the required findings for the granting of the requested variance:

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

The subject property is located in a CBD near a Metrorail station and transit center where greater density is recommended by the Sector Plan. Any redevelopment of this site would require similar levels of disturbance and tree loss. Some of the impacts and removals are required to provide offsite pedestrian connections and safety upgrades. Therefore, the variance request would be granted to any applicant in a similar situation.

2. Is not based on conditions or circumstances which are the result of actions by the applicant;

The requested variance is based on proposed development allowed under the existing zoning and the need to achieve adequate pedestrian safety upgrades. Furthermore, the distribution of trees throughout the site and next to existing buildings increases the difficulty of retaining the trees. The variance can be granted if the impacts are avoided or minimized and that any necessary mitigation is provided.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

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

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. Stream restoration providing water quality benefits will be performed in the Falklands South Parcel as part of the project. On and offsite tree plantings will provide additional benefits towards water quality. The site currently has no stormwater management, whereas the MCDPS issued a letter accepting the Stormwater Management Concept for the Property on January 28, 2015. Stormwater management goals met onsite via the use of green roof and micro-biofiltration and structural filtration. The MCDPS review and ultimate approval of the sediment and erosion control and storm water management plans will further ensure that appropriate standards are met.

Mitigation for Trees Subject to the Variance

There are 23 subject trees proposed for removal in association with the project. Planting mitigation for the removals should be at a rate that approximates the form and function of the trees removed. Therefore, staff is recommending that replacement occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 798 diameter inches of trees to be removed, the applicant must provide mitigation of at least 199.5 inches of caliper replacements. The forest conservation plan shows 195.5 caliper inches of standard tree plantings and also includes the onsite transplant of potential champion "XX" (a twin stem 10"/13" hawthorn) which would credit as 23 inches of mitigation plantings, and more than exceed the mitigation requirements when combined with the standard plantings.

County 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 applicant's request was forwarded on July 9, 2015, and, based on comments by the County Arborist, revisions were made and forwarded to the County Arborist on August 7, 2015 (Attachment E). The County Arborist issued a response to the variance request on August 14, 2015, and recommended that the variance be approved with the condition that mitigation is provided (Attachment F). Additionally, the County Arborist provided general recommendations on calculating mitigation plantings and providing tree preservation measures.

Noise

The June 1983 *Staff Guidelines for Consideration of Transportation Noise Impacts in Land Use Planning and Development* states that 65 dBA is generally applied in the urban ring, freeway and major highway corridor areas, where ambient noise levels are such that application of a stricter guideline would be infeasible or inequitable.

The project proposes residential units located near a railroad track and major highway corridors. A noise impact analysis is required to detail the portions of the property that are subject to noise levels exceeding 65 dBA. However, it is anticipated that any affected units will be attenuated from excessive noise by the design and appropriate installation of the building shell and windows. Some of the proposed outdoor space areas, such as the courtyards, are also believed to be within noise impact zones. The higher elevation of the courtyards will diminish the negative effects of the noise impacts. Furthermore, glass windbreak screens or other design elements could be used to further mitigate exterior noise impacts if necessary. The final details will be incorporated into the certified site plans prior to approval. A number of conditions are recommended by staff to ensure that the interior and exterior noise levels are appropriately mitigated.

Stormwater Management

The MCDPS Stormwater Management Section approved the stormwater management concept on January 28, 2015. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of green roof, micro-biofiltration, and structural filtration.

SECTION 7: SITE PLAN ANALYSIS AND FINDINGS

1. *When reviewing an application, the approval findings apply only to the site covered by the application.*
2. *To approve a site plan, the Planning Board must find that the proposed development:*
 - a. *satisfies any previous approval that applies to the site;*

The applicant is submitting this application for site plan amendment approval concurrently with the proposed sketch plan and amendment to the approved preliminary plan. This site plan, covering Phase 1 of the proposed development, is consistent with the development proposed under the sketch plan and preliminary plan amendment. Subsequent site plan(s) will be filed in the future when the remaining phases of the proposed development are ready to move forward.

- b. *satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

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

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

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

- d. *satisfies applicable use standards, development standards, and general requirements under this Chapter;*
 - i. *Division 4.5. Commercial/Residential Zones*

Development Standards

The Phase 1 project is approximately 3.5 net acres zoned CR 3.0 C0.75 R3.0 H145T. The following table, Table 8, shows the application's conformance to the development standards of the zone.

Table 8-Site Plan Project Data Table

Section	Development Standard	Permitted/ Required	Proposed in Sketch Plan	Proposed in Site Plan
59 – 4	Gross Tract Area (sf)	n/a	425,443	425,443
4.5.4.B.2.b	Density CR3.0, C0.75, R3.0, H145T Commercial FAR/GAF Residential FAR/GFA TOTAL FAR/GFA	0.75/319,082 3.0/1,276,329 3.0/1,276,329	0.28/120,000 2.72/1,156,329 3.0/1,276,329	0.22/96,000 0.79/337,610 1.02/433,610
4.5.4.B.2.b	Building Height (feet) CR3.0, C0.75, R3.0, H145T Building 1A Building 1B	145	145	76 89
4.5.4.B.3	Minimum Setback From R.O.W.	0'	0'	0'
4.5.4.B.1	Open Space Public Open Space (%/sq. ft.)	10/30,129	10/30,129	6/18,240
6.2	Parking spaces, minimum-maximum⁶	911-2,380	1,179	652

ii. Standards of Approval for Retail Establishments Greater than 50,000 Square Feet

Retail/service establishments over 50,000 square feet are permitted as a limited use in the CR Zone. The potential future grocery store will be up to 62,000 square feet and will satisfy the additional standards for approval, as required in Section 3.5.11.B.2.a.iv. The potential grocery store will be located on the 2nd floor of building 1A, with ground-floor retail below and residential above. Parking for the proposed grocery store will be accommodated in an at-grade and partial below-grade parking garage. The exterior façade has been designed to incorporate the grocery store, such that, if a grocery store does not occupy the 2nd floor space the 2nd floor could seamlessly be converted into residential dwelling units. Access to the potential grocery store will be via an at grade entrance on Market Street or East West Highway, and access to the ground-floor retail will be provided from Market Street and East West Highway. For all of these reasons, Sections 3.5.11.B.2.a.iv(a) – (f) are satisfied.

iii. Division 4.7 Optional Method Public Benefits

In accordance with the Zoning Ordinance, Section 59-4.7.1, the Phase 1 site plan proposes the following phased public benefits to satisfy the requirements: Major Public Facilities, Transit Proximity, Connectivity and Mobility, Quality of Building and Site Design, and Protection and Enhancement of the Natural Environment.

⁶ The final number of parking spaces may be adjusted between the minimum and maximum allowed under Section 6.3 of the Zoning Ordinance at the time of building permit based on final unit count and/or bedroom mix.

Table 9- Phase 1 Site Plan Public Benefits Calculations

Public Benefit	Incentive Density Points		
	Proposed Under Sketch Plan	Requested	Recommended
Major Public Facilities	3.7	1.9	1.9
Transit Proximity	40	20	20
Connectivity and Mobility			
Advanced Dedication	8	4	4
Minimum Parking	7.73	3.35	3.35
Transit Access Improvement	10	10	10
Wayfinding	5	2.5	2.5
Quality of Building and Site Design			
Architectural Elevations	10	5	5
Exceptional Design	0 - 5	2.5	0
Structured Parking	15.3	9.35	9.35
Protection and Enhancement of the Natural Environment			
Building Lot Termination	9	3	3
Cool Roof	10	5	5
Habitat Preservation and Restoration	12.2	0	0
Vegetated Roof	5	2.5	2.5
Vegetated Wall	10	10	10
TOTAL	145.9 – 150.9	79.1	76.6

Major Public Facilities

In accordance with the Sector Plan, the project will construct an off-road shared use path along the East West Highway frontage of the subject property. In addition, the project will provide a bike share station at the entrance to the subject property on Market Street.

Transit Proximity

The subject property is located within ¼ mile of the entrance to the Silver Spring Metro Station, which allows the development to be eligible for Level 1 transit as defined in the Zoning Ordinance. Staff recommends the full 40 points as provided in the Zoning Ordinance for CR-zoned properties that are within ¼ mile of a Metrorail station.

Connectivity and Mobility

Advanced Dedication: The application proposes to place in reservation 24,517 square feet for future dedication to the Purple Line.

Minimum Parking: The application proposes fewer than the maximum number of allowed parking spaces. The maximum number of allowed spaces is 2,380, but the application will provide 1,179 spaces.

Transit Access Improvement: The project will improve sidewalks and accessibility ramps at the northwest, southwest, and southeast corners of the intersection of 16th street and East West

Highway. These improvements are located within ½ of the project site and are not otherwise required improvements along the subject property's frontage.

Wayfinding: In conjunction with the shared use path on East West Highway and other public spaces on the subject property, wayfinding signs will be installed to direct pedestrians and bicyclists to the Metrorail station and other points of interest.

Quality of Building and Site Design

Architectural Elevations: The project buildings are designed to provide ground-floor transparency. The ground-floor façade is primarily glass, readily allowing views into and out of the building. Numerous doors provide access into the retail spaces from East West Highway and Market Street.

Exceptional Design: Addressing "Quality Building and Site Design", Section 59.4.7.3.E of the Zoning Ordinance states:

High quality design is especially important in urban, integrated-use settings to ensure that buildings and uses are visually compatible with each other and adjacent communities and to provide a harmonious pattern of development. Due to increased density in these settings, buildings tend to be highly visible and high quality design helps attract residents, patrons and businesses to these areas. *Location, height, massing, facade treatments and ornamentation of buildings all affect sense of place, orientation and the perception of comfort and convenience.* The quality of the built environment affects light, shadow, wind and noise, as well as the functional and economic value of property. [emphasis added]

For the exceptional design public benefit, the Zoning Ordinance allows up to 10 points for "building or site design whose visual and functional impacts exceptionally enhance the character of a setting" per the paragraph above. To achieve points for this benefit, the *Implementation Guidelines* set criteria which the project must meet (p.39):

Incentive density of 5 points is appropriate for development that meets at least four [emphasis added] of the following criteria and 10 points for development that meets all of them. Building or site design that:

- provides innovative solutions in response to the immediate context
- creates a sense of place and serves as a landmark
- enhances the public realm in a distinct and original manner
- introduces materials, forms, or building methods unique to the immediate vicinity or applied in a unique way
- uses design solutions to make compact, infill development living, working, and shopping environments more pleasurable and desirable on a problematic site
- integrates low-impact development methods into the overall design of the site and building, beyond green building or site requirements.

The project arguably "uses design solutions to make compact, infill development living, working, and shopping environments more pleasurable and desirable on a problematic site" and, in contrast to the single-use automobile-oriented development surrounding the site, will provide a mixed-use node that will create a sense of place and serve as a landmark.

However, in Downtown Silver Spring, the creation of a street and block system with buildings that are oriented to clearly define a pedestrian mixed-use place, while most desirable, is not an innovative solution

in response to the immediate context, nor does it do so in a unique or especially distinct and original manner. Though the proposed architecture includes references to the surrounding context, the “location, height, massing, facade treatments and ornamentation of buildings” do not present an innovative solution in response to the immediate context.

The design for this site plan does not meet at least four of the criteria listed in the *Implementation Guidelines* and is not eligible for points under this Public Benefit.

Structured Parking: The applicant requests 15.3 points for structured parking consisting of 527 above-grade spaces and 639 below-grade spaces. This incentive is granted on a sliding scale based on the percentage of spaces provided above and below grade.

Protection and Enhancement of the Natural Environment

Building Lot Termination: The applicant must purchase BLT easements in an amount equal to 7.5% of the incentive density floor area. One BLT must be purchased for each 31,500 square feet of gross floor area. With these parameters, the applicant must purchase 2.53 BLTs for the entire project.

Cool Roof: All roof areas not covered by green roof or mechanical equipment will be covered by a cool roof having a minimum solar reflectance index of 75.

Vegetated Roof: The applicant requests 5 points for providing vegetated roofs with a soil depth of at least 4 inches and covering at least 33% of the total roof excluding space for mechanical equipment.

Vegetated Wall: A vegetated wall, visible from 16th Street, will be placed on the west side of Building 1A, covering an area of 696 square feet. The green screen is located on a blank wall, which has an area of 999 square feet. The green screen will cover 70% of the blank wall. The green screen will be comprised of a three-dimensional welded wire trellis system that will be attached to the building face. Two different species of vine will be planted on the green screen with varying bloom times. American wisteria is a deciduous vine with purple blooms that emerge during early summer. Crossvine is an evergreen climbing vine with red and yellow blooms that emerge in early spring.

iv. Division 6.1. Site Access

A network of private drives for the two Phase 1 buildings provides well-integrated vehicular access from East West Highway and 16th Street to entrances to the underground parking garage. “Market Street” will be constructed with the Phase 1 development and will appropriately function for vehicular access for the buildings.

v. Division 6.2. Parking, Queuing, and Loading

The project’s two Phase 1 mixed-use buildings will share an underground parking garage for adequate off-street parking.

vi. Division 6.3. Open Space and Recreation

The overall project has a 10 percent public open space requirement, which yields a requirement of 30,129 square feet of open space. The project proposes to provide 30,500 square feet of public open space, of which 18,240 square feet will be provided in Phase 1.

The Phase 1 development meets the active and passive recreation space required by the zone. The proposed development will provide the following on-site recreation facilities: Indoor community space, swimming pool, indoor fitness facility, picnic/sitting areas, a bike system, and a pedestrian system.

The development meets the required supply of recreation facilities based on the calculation methods in the M-NCPPC Recreation Guidelines. The Phase 1 development will provide adequate, safe, and efficient recreation facilities to allow residents to lead an active and healthy life.

vii. Division 6.4. General Landscaping and Outdoor Lighting

Landscaping and lighting, as well as other site amenities, will be provided to ensure that these facilities will be safe, adequate, and efficient for year-round use and enjoyment by residents and visitors. The application provides streetscape along the new private drive (“Market Street”) and will transform existing streetscape along the frontage on 16th Street and East West Highway, with new street trees, improved sidewalks, and street lighting. Site furnishings will be integrated within the site to create a unique and interesting place and ensure accessibility and comfort.

As shown in the Development Standards table, the Phase 1 Site Plan meets all of the general requirements and development standards of Section 4.5 of the Zoning Ordinance, the optional method public benefits provisions of Division 4.7 of the Zoning Ordinance, and the general development requirements of Article 59-6 of the Zoning Ordinance.

e. satisfies the applicable requirements of:

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

The MCDPS Stormwater Management Section approved the stormwater management concept on January 28, 2015. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of green roof, micro-biofiltration, and structural filtration.

ii. Chapter 22A, Forest Conservation.

The application is in compliance with the Environmental Guidelines and Forest Conservation Law. Staff recommends that the Planning Board approve the final forest conservation plan as part of the site plan with the conditions cited in this staff report. The variance approval is assumed in the Planning Board’s approval of the forest conservation plan.

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

The Phase 1 site plan provides adequate, safe, and efficient parking and circulation patterns. On-site private drives will well-integrated vehicular access from 16th Street and East West Highway to an underground garage, which will be shared between the two buildings. The garage will ensure adequate off-street parking. Pedestrians will access the subject property via sidewalks along the property frontage and along the proposed internal private drives, with shade and ornamental trees, perennials, shrubs, and bio-retention plantings.

The Phase 1 Site Plan includes sidewalk and streetscape upgrades to the subject property's frontage along 16th Street and East West Highway. These enhancements will also facilitate improved pedestrian connections from nearby neighborhoods by offering access to existing and planned bikeways, transit, shared use paths, and retail uses.

The project provides safe and well-integrated buildings, open spaces and site amenities. The project's building heights of less than 90 feet provide an appropriate transition from taller buildings proposed for future phases of the project to the existing multi-family residential buildings. Specifically, the project's proposed structures create a step down in height from the railroad right-of-way and the proposed Phase 2 and Phase 3 multi-family buildings to the garden apartments on the South and West Parcels. The site plan also reduces building massing along East West Highway by arranging the apartments in two buildings where the previously approved plan had one larger building.

The open spaces shown on the Phase 1 site plan are also well integrated into the project. The Phase 1 site plan reflects streetscaping improvements along 16th Street, East West Highway, and the private drive "Market Street," which will include sidewalks and street trees. The buildings will also provide courtyards on the roof of the retail podium level, as an amenity for residents of the apartments.

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

As discussed in the Sketch Plan section of this staff report, the Phase 1 site plan substantially conforms with the recommendations of the *Silver Spring CBD Sector Plan*. Specifically, the Phase 1 site plan satisfies the Sector Plan's guidance to create a (1) a transit-oriented downtown, (2) a commercial downtown, (3) a residential downtown, (4) a civic downtown, (5) a green downtown, and (6) a pedestrian friendly downtown. The project will create mixed-use commercial and residential buildings that are accessible by the Silver Spring Metrorail station and other transit, while creating a pedestrian-friendly streetscape and public open spaces in which people can gather. In addition, the project will plant street trees along the subject property frontages and will enhance a streambed on the South Parcel.

h. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;

As discussed in the preliminary plan findings, the proposed development in the Phase 1 site plan will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

i. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and

The Property is not located in a Rural Residential or Residential zone.

- j. *on a property in all other zones, is compatible with existing and approved or pending adjacent development.*

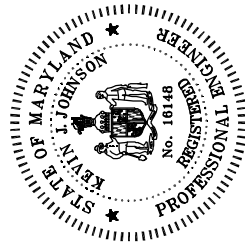
The Phase 1 mixed-use buildings are compatible with existing and pending nearby development. The project's building heights of less than 90 feet provide an appropriate transition from taller buildings proposed for future phases of the project to the existing multi-family residential buildings. Specifically, the project's proposed structures create a step down in height from the railroad right-of-way and the proposed Phase 2 and Phase 3 multi-family buildings to the garden apartments on the South and West Parcels. The site plan also reduces building massing along East West Highway by arranging the apartments in two buildings where the previously approved plan had one larger building.

CONCLUSION

The project complies with the general requirements and development standards of Section 4.5, the optional method public benefits provisions of Division 4.7, and the general development requirements of Article 59-6 of the Zoning Ordinance. The project satisfies the findings of the Subdivision Regulations and substantially conforms with the goals and recommendations of the *Silver Spring CBD Sector Plan*. Therefore, staff recommends approval of Sketch Plan No. 320150020, Preliminary Plan Amendment No. 12007056A, and Site Plan Amendment No. 82012005A with the conditions specified at the beginning of this report.

ATTACHMENTS

- Attachment A: Sketch Plan, Preliminary Plan Amendment, Site Plan Amendment, and Forest Conservation Plan
- Attachment B: Existing Declaration of Restrictive Covenant
- Attachment C: Declaration of Restrictive Covenant, with strikeout showing proposed changes to text
- Attachment D: Agency Correspondence Referenced in the conditions
- Attachment E: Variance request letter
- Attachment F: County Arborist Response to Variance Request



Professional Certification
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
 License No.: 18148
 Expiration Date: 08-22-16

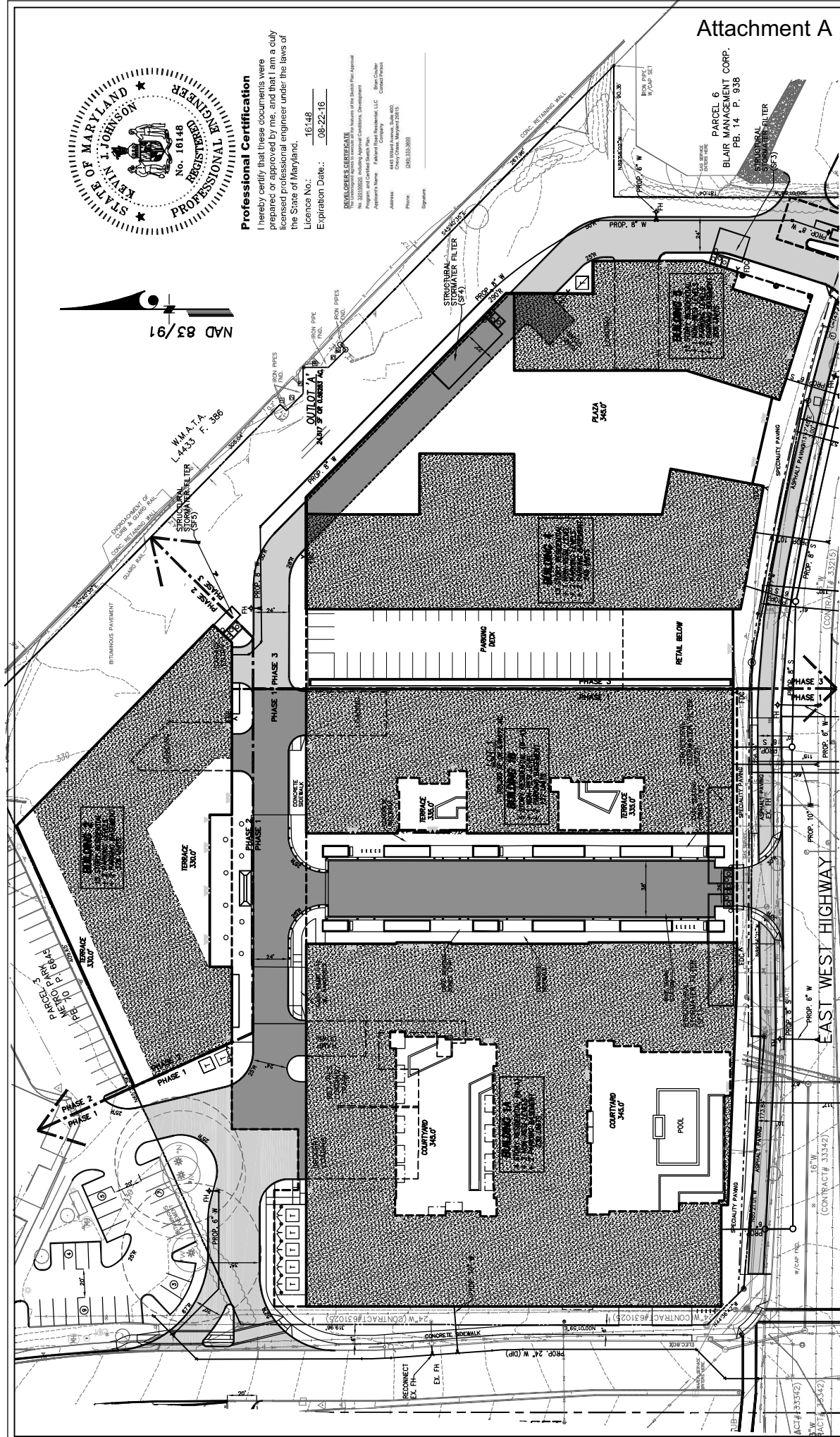
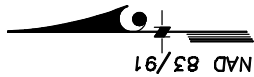
DEVELOPER'S CERTIFICATE
 I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief.
 Name: Falkland North Development, LLC
 Address: 1400 N. FREDERICK AVE., SUITE 100, GAITHERSBURG, MD 20878
 Phone: (301) 963-0306
 Fax: (301) 963-0306
 Website: www.falklandnorth.com

Attachment A

FALKLAND NORTH

SKETCH PLAN

146 N. FALCLAND LANE
 SILVER SPRING, MD



PLAN INCL. 1:02
SCALE: 1"=60'
DRAWN: 5-24-15
SHEET: C-21
FILE NO.:

205 N. FREDERICK AVE., S. 100
 GAITHERSBURG, MD 20877
 Tel: (301) 963-1133
 Fax: (301) 963-0306
 www.falklandnorth.com

J.B.A.
 Johnson-Bernat Associates, Inc.
 Engineering, Surveying, Planning

PUBLIC STREET
 MARYLAND ROUTE 410
 WIDTH VARIES
 SCR PLAT NO. 1309

SCALE: 1"=60'
 0 60 120 180
 CONTRACT # 33342



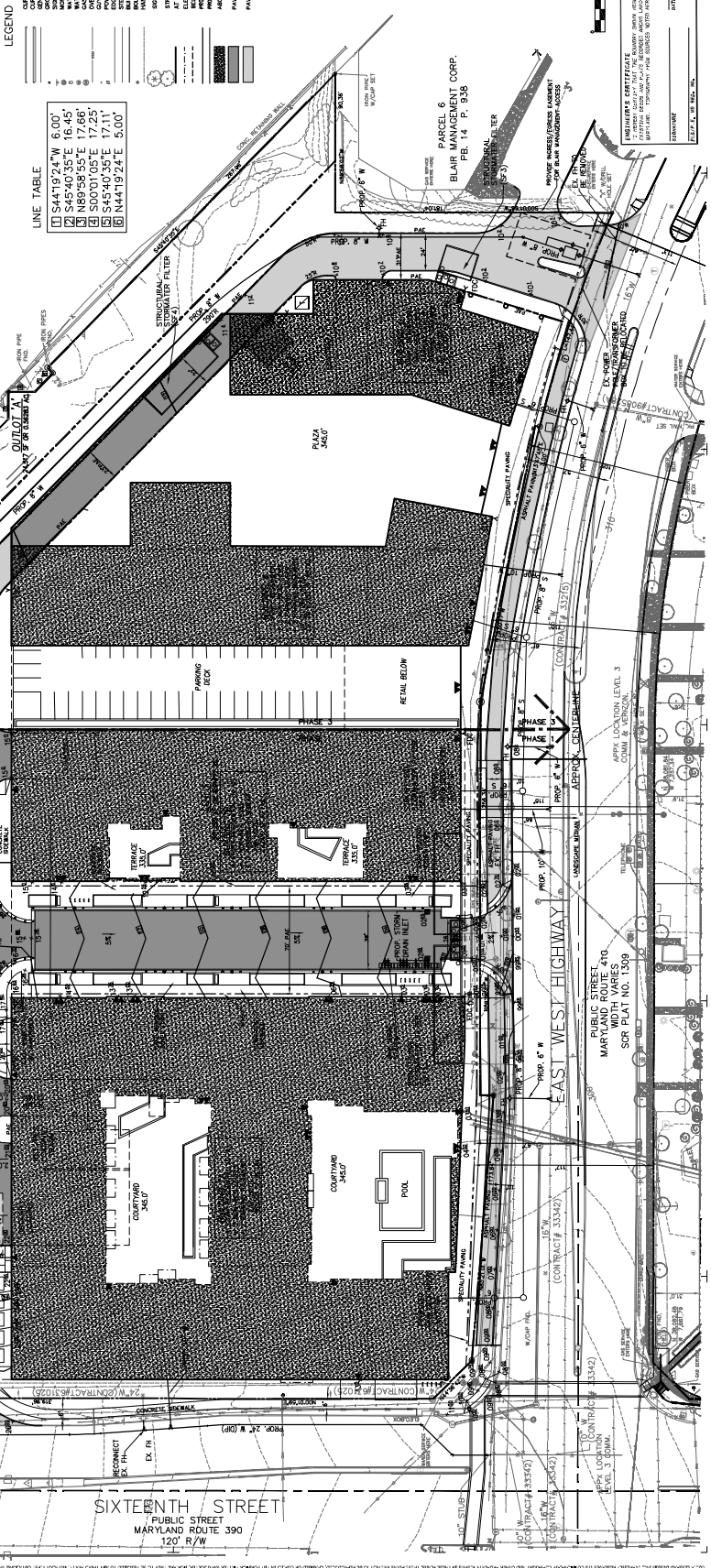
PERMITS REQUIREMENTS WORKSHEET

PERMIT TYPE	APPLICANT	DATE	STATUS	NOTES
Site Plan	Falkland North Residential, LLC	07/07/15	Approved	Final approval for construction.
Stormwater	Reynolds & Company, Inc.	07/07/15	Approved	Final approval for stormwater management.
Grading	Reynolds & Company, Inc.	07/07/15	Approved	Final approval for grading plan.
Electrical	Electric Power Company	07/07/15	Approved	Final approval for electrical layout.
Water	Water & Sewer Commission	07/07/15	Approved	Final approval for water and sewer lines.
Gas	Gas Utility	07/07/15	Approved	Final approval for gas lines.
Fire	Fire Department	07/07/15	Approved	Final approval for fire safety measures.
Other	Various	07/07/15	Approved	Final approval for other permits.

NOTE:
-UNIT MIX IS PRELIMINARY AND SUBJECT TO CHANGE UNTIL APPROVAL OF THE CERTIFIED SITE PLAN, BUT WILL NOT EXCEED A MAXIMUM OF 1500 UNITS.
-WITHIN 15 TO 25% ABOVE THE POINT HAS PROFFERED THE FOLLOWING ADDITIONAL AFFORDABLE HOUSING:
1. THE RESERVATION OF 20 UNITS ON-SITE AS WORKFORCE HOUSING AND 10 UNITS FOR A FURTHER 20 UNITS.
-THE APPLICANT HAS ENTERED INTO A NEW DECLARATION OF RESTRICTIVE COVENANTS WHICH INCLUDES THE OBLIGATION SET FORTH IN THE SECOND AND THIRD HOUSING PROPER AND IS RECORDED AS L. F.

LEGEND
CORE & OUTER
GRADING
LANDSCAPE
STREET PAVEMENT
PAVING ABOVE STRUCTURE
PAVING ON GRADE

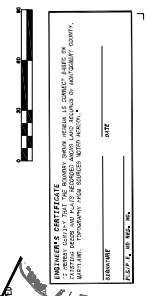
LINE TABLE
1 S44°19'24"E 6.00'
2 N89°59'55"E 17.68'
3 S00°01'05"E 17.25'
4 S45°40'35"E 17.11'
5 N44°19'24"E 5.00'



PERMITS REQUIREMENTS WORKSHEET

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Fire	Fire Department	07/07/15	Approved	Final approval for fire safety measures.
Other	Various	07/07/15	Approved	Final approval for other permits.

- GENERAL NOTES:**
1. BOUNDARY MESSAGES SHOWN HEREON AND DIMENSIONS INFORMATION SHOWN AT 1' FOOT INTERVALS ON THIS PLAN ARE OBTAINED FROM FIELD SURVEY BY CANNON SURVEYING DESIGN, LLC.
 2. ALL UTILITIES TO BE LOCATED BY GROUND PENETRATING RADAR (GPR) SYSTEMS AND IS PRESENTLY CLASSIFIED IN WATER AND SEWER CATEGORIES N-T AND S-T, RESPECTIVELY.
 3. THE SITE LIES WITHIN THE ROCK CREEK INTERSECT. NO PORTIONS OF THIS SITE ARE WITHIN A FLOODPLAIN, STREAM BUFFER OR WETLANDS.
 4. UTILITIES COMPANIES:
ELECTRIC: POTOMAC ELECTRIC POWER COMPANY
GAS: MARYLAND NATURAL GAS
WATER: MOUNTAIN SUBURBAN SANITARY COMMISSION
 5. ALL UTILITIES SHALL BE PROVIDED ON SITE AND THE DICA AGREEMENT TO BE EXECUTED PRIOR TO APPROVAL OF BUILDING PERMIT. SHALL REQUEST THIS.
 6. ALL ON-SITE UTILITIES WILL BE PLACED UNDERGROUND.



580 111-001

Tax ID # 13-1-959802

AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT

THIS AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT (this "Amendment") is made this 31st day of May, 2013, by FALKLAND ROAD RESIDENTIAL, L.L.C., a Delaware limited liability company ("Declarant") and the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic created and existing under the laws of the State of Maryland (the "Planning Commission"), collectively the "Parties".

WHEREAS, on August 2, 2010, Home Properties Falkland Chase, LLC, a Delaware limited liability company ("Home") entered into a Declaration of Restrictive Covenant that was recorded among the Land Records of Montgomery County, Maryland at Liber 40499, Folio 005 (the "Original Declaration"), for the benefit of the Planning Commission; and

WHEREAS, Exhibit "B" to the Original Declaration set forth certain proposed development commitments related to development of the North Parcel, as that property is defined and described in the Original Declaration and on Exhibit "A" attached hereto; and

WHEREAS, Declarant is the current owner of the North Parcel; and

WHEREAS, an affiliate of Home is the current owner of the Woodleaf Apartments, located at 1512 Heather Hollow Circle in Silver Spring, Maryland; and

WHEREAS, the Original Declaration committed the owner of the North Parcel to reserve certain affordable units at the Woodleaf Apartments; and

WHEREAS, the Parties now desire to amend the Original Declaration to eliminate the commitment concerning the reservation of affordable units at the Woodleaf Apartments.

NOW, THEREFORE, in consideration of the above recitals, each of which is incorporated in and made a substantive part of this Amendment, and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the Parties hereby amend the Original Declaration as follows:

1. Exhibit "B" to the Original Declaration is hereby amended to delete Item No. "4", which relates to the reservation of affordable units at Woodleaf Apartments in Silver Spring. It is the intent of this Amendment that any obligations regarding affordable units at Woodleaf Apartments in Silver Spring shall be solely the responsibility of the owner of the Woodleaf Apartments in Silver Spring and shall not in any manner be the responsibility of the owner of the North Parcel.
2. Paragraph 8 of the Original Declaration provides that Declarant may amend the Original Declaration by a written instrument, recorded among the Land Records, and approved by the Planning Commission.
3. In the event of any inconsistency between the terms of this Amendment and the Original Declaration, the terms of this Amendment shall govern.

4. Except as modified by this Amendment, the terms of the Original Declaration are hereby ratified and affirmed.

5. This Amendment may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

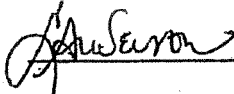
IN WITNESS WHEREOF, Declarant and the Planning Commission have signed, sealed and delivered this Amendment as their own free act and deed as of the day and year first written above.


Witness/Attest

Declarant:

FALKLAND ROAD RESIDENTIAL, L.L.C.,
a Delaware limited liability company

By: JBG/Company Manager IV, L.L.C., a Delaware
limited liability company, its managing member

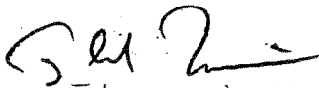


By: 
Name: Robert A. Stewart
Title: Managing Member

Witness/Attest


Planning Commission:

**MARYLAND-NATIONAL CAPITAL PARK AND
PLANNING COMMISSION,**
a body corporate and politic created and existing under the
laws of the State of Maryland



Joseph C. Zimmerman
Secretary-Treasurer

By: 
Patricia Colihan-Barney,
Executive Director

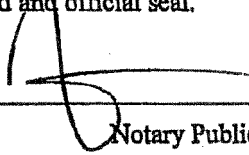


Approved for legal sufficiency
M-NCPPC Office of General Counsel

State of Maryland
County of Montgomery

I HEREBY CERTIFY that on this 22nd day of April, 2013, before me, a Notary Public in and for the State and County aforesaid, personally appeared Robert A. Stewart, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as managing member of JBG/Company Manager IV, L.L.C., a Delaware limited liability company, the managing member of FALKLAND ROAD RESIDENTIAL, L.L.C., a Delaware limited liability company, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

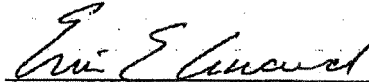
My Commission Expires: 5/4/13

[NOTARIAL SEAL]



ATTORNEY'S CERTIFICATE

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.



Erin E. Girard

After recording, return to:

Erin E. Girard, Esq.
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814

EXHIBIT A

Legal Description

PART THREE:

Being a portion of Parcel #4 as shown on a Plat of Street Dedication recorded among said Land Records in Plat Book 13 as Plat No. 851 and being more particularly described as follows:

BEGINNING at an iron pipe found at the Southwesterly corner of Parcel #3, Rosemary Woods as shown on a Plat recorded among the Land Records in Plat Book 70 as Plat No. 6643 and being on the Easterly right of way line of 16th Street, 120 feet wide; thence departing said 16th Street and binding on said Parcel #3, Rosemary Woods

- 1) North 65 degrees 36' 39" East, 409.65 feet to an iron pipe set; thence
- 2) North 66 degrees 45' 39" East, 43.76 feet to an iron pipe set at the Northwestery corner of a Declaration of Taking by The Washington Metropolitan Area Transit Authority and described in Part 1 of Parcel MB309 of a deed recorded among said Land Records in Liber 4433 at folio 386; thence departing said Parcel #3, Rosemary Woods and binding on said Declaration of Taking Parcel
- 3) South 45 degrees 40' 35" East, 305.04 feet to a point; thence
- 4) South 44 degrees 19' 24" West, 6.00 feet to a point; thence
- 5) South 45 degrees 40' 35" East, 16.45 feet to a point; thence

- 6) North 69 degrees 58' 55" East, 17.66 feet to a point; thence
- 7) South 00 degrees 01' 05" East, 17.25 feet to a point; thence
- 8) South 45 degrees 40' 35" East, 17.11 feet to a point; thence
- 9) North 44 degrees 19' 24" East, 5.00 feet to a point; thence
- 10) South 45 degrees 40' 35" East, 257.96 feet to an iron pipe set on a Northwestery line of Parcel No. 6 as shown on a Plat entitled "Parcels Nos. 6 & 7, a Division of Parcel No. 5, Property of Blair Management Corporation" and recorded among said Land Records in Plat Book 14 as Plat 938; thence departing said Declaration of Taking Parcel and binding on said Parcel No. 6;
- 11) North 69 degrees 58' 02" West, 90.36 feet to an iron pipe set; thence
- 12) South 00 degrees 01' 56" West, 161.04 feet to an iron pipe set on the Northerly right of way line of East West Highway, variable width; thence departing said Parcel No. 6 and binding on said East West Highway
- 13) 147.44 feet along the arc of a non-tangent curve to the left, having a radius of 968.51 feet and a chord bearing and distance of North 71 degrees 19' 46" West, 147.26 feet to a point; thence
- 14) North 13 degrees 47' 45" East, 3.00 feet to a point; thence
- 15) North 78 degrees 50' 17" West, 183.95 feet to a point; thence
- 16) North 68 degrees 58' 21" West, 258.34 feet to a point; thence
- 17) South 00 degrees 03' 39" West, 9.06 feet to a point; thence
- 18) North 65 degrees 21' 01" West, 173.84 feet to a point; thence
- 19) North 44 degrees 36' 42" West, 35.68 feet to a point on the Easterly right of way line of said 16th Street; thence departing said East West Highway and binding on said 16th Street
- 20) North 00 degrees 01' 59" East, 319.95 feet to the point of beginning containing 328,846 square feet or 7.54927 acres of land, more or less.

TAX ID NO. 13-959602

TOGETHER WITH a non-exclusive easement and right of way for purposes of parking and ingress and egress over the property, more particularly described as "Easement East Center Line" as set forth in Amendment to Declaration of Easements, Covenants and Related Agreements recorded in Liber 6936 at folio 126, re-recorded in Liber 6978 at folio 494.

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this "**Declaration**") is made this 2nd day of August, ~~2008~~²⁰⁰⁹, by **HOME PROPERTIES FALKLAND CHASE, LLC**, a Delaware limited liability company, formerly known as Falkland Partners, LLC ("**Declarant**"), for the benefit of the **MARYLAND-NATIONAL CAPITAL PARKING AND PLANNING COMMISSION**, a body corporate and politic created and existing under the laws of the State of Maryland (the "**Planning Commission**").

R E C I T A L S:

- A. Declarant is the fee simple owner of a parcel of land located in Montgomery County, Maryland described on Exhibit "A" to this Declaration (the "**North Parcel**"). The North Parcel is part of a larger tract of land owned by Declarant.
- B. The North Parcel is currently improved by several apartment buildings (the "**North Parcel Buildings**") and related facilities.
- C. The North Parcel and North Parcel Buildings are identified as an historic resource in the Locational Atlas and Index of Historical Sites in Montgomery County, Maryland (the "**Historical Atlas**") maintained by the Planning Commission in accordance with Chapter 24A of the Montgomery County Code. As such, the North Parcel and North Parcel Buildings are subject to being included as an historic site in the Master Plan for Historic Preservation adopted by Montgomery County (the "**Historical Master Plan**").
- D. Declarant has filed with the Montgomery County Planning Board of the Planning Commission (the "**Planning Board**") an application for approval of a project plan and preliminary subdivision plan providing for the redevelopment of the North Parcel. Declarant intends to amend such plans and file a site plan covering the entire North Parcel (collectively, the "**Revised Development Plans**") in connection with such redevelopment. The redevelopment of the North Parcel in accordance with the Revised Development Plans will necessarily require the removal of the North Parcel and North Parcel Buildings from the Historical Atlas, the elimination of the North Parcel and North Parcel Buildings from consideration for designation in the Historical Master Plan, and the actual demolition of the North Parcel Buildings. Declarant, in an effort to demonstrate that redevelopment of the North Parcel will provide substantial public benefits, shall proffer as part of its application for Planning Board approval of the Revised Development Plans the commitments by Declarant described in Exhibit "B" to this Declaration (the "**Proposed Developer Commitments**"). The Planning Board has adopted a resolution providing that if and when the Revised Development Plans are approved by the Planning Board, with or without condition, the North Parcel and North Parcel Buildings shall automatically be removed from the Historical Atlas, without the requirement of any further action by the Planning Board (except ministerial action to confirm and implement the removal).
- E. In furtherance of its contemplated redevelopment of the North Parcel and to maintain the current status of the North Parcel while the Revised Development Plans are being prepared and processed, Declarant is willing to make certain voluntary covenants for the benefit of the Planning Commission as set forth below in this Declaration.

NOW, THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant declares and covenants as follows:

1. During the Forbearance Period (defined below), Declarant shall not demolish or substantially alter the exterior features of the North Parcel Buildings, including by neglect, without the prior approval of the Planning Board, except as may be reasonably necessary in the case of fire or other casualty, condemnation, or unsafe or hazardous condition or in connection with the construction or planned construction of public improvements on or about the North Parcel, including, without limitation, any public transit facilities. **“Forbearance Period”** means the period that (a) commences upon the date that the Revised Development Plans are finally approved (beyond appeal) by the Planning Board, and the North Parcel and North Parcel Buildings are removed from the Historical Atlas without having been included in the Historical Master Plan, and (b) terminates upon the earliest to occur of the following: (i) issuance of a building permit in connection with the redevelopment of the North Parcel pursuant to the approved Revised Development Plans (the **“Development Commencement Date”**), (ii) ninety (90) days after Declarant notifies the Planning Board in writing that Declarant is abandoning the Revised Development Plans or otherwise abandoning its plans to develop the North Parcel in accordance with the Revised Development Plans (the **“Application Abandonment Date”**), or (iii) June 30, 2018 (the **“Forbearance Period Outside Termination Date”**). Nothing in this Declaration shall be deemed to prevent Declarant from electing at any time not to pursue the Revised Development Plans or not to proceed with the development of the North Parcel in accordance with the Revised Development Plans.

2. Declarant shall have the right, in its sole discretion, to extend the Forbearance Period beyond the Forbearance Period Outside Termination Date from time to time as Declarant may deem appropriate. Such extension shall be effected by Declarant recording an amendment to this Declaration in the Land Records setting forth the extension. In the event of any such extension, Declarant shall promptly furnish a copy of the amendment to the Planning Commission.

3. Despite the foregoing, if (a) neither the Development Commencement Date nor Application Abandonment Date have occurred by the end of the Forbearance Period, (b) Declarant has determined not to extend the then applicable Forbearance Period Outside Termination Date, and (c) this Declaration would otherwise expire on such Forbearance Period Outside Termination Date in accordance with the terms of Paragraph 1 above, this Declaration and the demolition and alteration restrictions applicable during the Forbearance Period shall nonetheless remain in full force and effect and shall automatically be extended until ninety (90) days after Declarant gives written notice to the Planning Commission advising that the Forbearance Period Outside Termination Date has passed without the Development Commencement Date having occurred and that the term of this Declaration will expire ninety (90) days from the date of the notice. Upon any termination of the Forbearance Period in accordance with this Declaration, this Declaration shall be deemed terminated and of no further force or effect, except that Paragraph 15 shall survive termination.

4. Nothing in this Declaration shall be deemed to prohibit or impair, or require the Planning Board’s approval for, (a) any ordinary repairs or maintenance to the exterior of the

North Parcel or North Parcel Buildings, (b) any landscaping work on or about the North Parcel, or (c) any work or alterations to the interior of the North Parcel Buildings.

5. Declarant agrees that the Proposed Developer Commitments may be incorporated by the Planning Board as conditions to approval of the Revised Development Plans and that Declarant shall not object to such conditions, provided that such conditions are not greater in scope or more onerous to Declarant than the Proposed Developer Commitments as stated in **Exhibit "B"**.

6. This Declaration is made for the sole benefit of the Planning Commission and the Planning Commission shall have the sole right to enforce the terms of this Declaration. In the case of any breach or threatened breach of this Declaration, the Planning Commission may exercise any rights or remedies available at law or in equity for such breach, including, without limitation, a suit for specific performance or injunctive relief. No other person or entity may enforce this Declaration or shall have any right or remedy with respect to this Declaration. This Declaration is not intended to create, nor shall it be construed as creating, any rights in or for the benefit of the general public or any tenants of the North Parcel Buildings nor shall it affect or benefit any real property outside of the North Parcel or the owners or tenants of such real property.

7. Declarant acknowledges that the Revised Development Plans remain subject to review and approval by the Planning Commission according to its regulatory processes and that nothing in this Declaration obligates the Planning Commission to grant such approval. This Declaration shall not affect, in any manner whatsoever, any public action, review or approval process involving the Planning Commission or for which the Planning Commission is responsible, including, without limitation, any proceedings under the Subdivision Regulations. No representations or commitments have been made by the Planning Commission or anyone on behalf of the Planning Commission regarding the approval of the Revised Development Plans.

8. The covenants, agreements, rights, benefits, obligations and liabilities created in this Declaration shall be deemed to touch, concern, run with, and be binding upon the land with respect to the North Parcel. This Declaration shall bind Declarant and its successors and assigns and inure to the benefit of the Planning Commission and its successors and assigns (except that the Planning Commission shall not be entitled to assign its right to enforce this Declaration). This Declaration may be amended by an instrument in writing executed by Declarant, its successors or assigns, and recorded in the Land Records. All amendments shall require the written approval of the Planning Commission, except that amendments extending the Forbearance Period Outside Termination Date as provided in Paragraph 2 above shall not require such approval.

9. The liability and obligations of Declarant or any successor under this Declaration shall only apply to Declarant or such successor during the term in which it owns a fee simple interest in the North Parcel. When Declarant or any successor owner of the North Parcel ceases to own a fee simple interest in the North Parcel, the liability and obligations thereafter accruing under this Declaration (but not any accrued and unperformed liability or obligations) shall be the liability and obligations of its transferee in title to the North Parcel.

10. Declarant represents that it has all requisite power and authority to execute, deliver, and perform its obligations under this Declaration. This Declaration constitutes the legal, valid, and binding obligation of Declarant and is enforceable against it in accordance with its terms.

11. The Recitals set forth in this Declaration and all Exhibits attached to this Declaration are incorporated in and made a part of this Declaration.

12. No delay or omission by the Planning Commission in enforcing the provisions of this Declaration shall impair or be construed to be a waiver of any such right of enforcement.

13. This Declaration shall be governed by and construed in accordance with the laws of the State of Maryland, excluding choice of law principles.

14. Each provision of this Declaration is intended to be severable. If any term or provision of this Declaration shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Declaration and shall not affect the validity of the remainder of this Declaration.

15. Upon written request by Declarant from time to time, the Planning Commission shall execute, acknowledge, and deliver to Home Properties a written statement certifying to Declarant and/or its transferees or mortgagees that, to the best of its knowledge, information, and belief, there are no outstanding defaults by Declarant under this Declaration (or specifying the details of any default by Declarant outstanding at that time) and addressing such other matters as may be reasonably requested by Declarant, its transferees or mortgagees. In addition, upon any termination of this Declaration, the Planning Commission shall execute, acknowledge, and deliver to Declarant such written instrument, in recordable form, as Declarant may request to confirm the termination of this Declaration and Declarant shall be entitled to record such instrument in the Land Records. Any document submitted by Declarant to the Planning Commission in accordance with this Paragraph shall be executed, acknowledged and delivered by the Planning Commission to Declarant within ten (10) business days after receipt by the Planning Commission. Documents executed by the Planning Commission under this Paragraph may be relied upon by Declarant and any prospective transferee or mortgagee of Declarant.

16. All notices, requests, demands or other communications under this Declaration shall be in writing and deemed given (a) when delivered personally, with signed receipt of delivery, (b) on the day deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, (c) on the day deposited with a recognized overnight courier service which requires signed receipt of delivery (such as Federal Express), or (d) on the day transmitted by fax, provided that notice is also sent the same day by one of the foregoing methods of delivery. In all events, such notices and communications shall be addressed as follows (or to such other address which a party may from time to time hereafter designate by notice given in accordance with this Paragraph):

If to Declarant: Home Properties
Washington Regional Office
8229 Boone Boulevard
Suite 500
Vienna, Virginia 22182
Attn: Donald R. Hague, Senior Vice President/Development
Telecopy No.: (703) 370-7368

with a copy to: Home Properties
850 Clinton Square
Rochester, New York 14604
Attn: Kathleen K. Suher, Esq.
Telecopy No.: (585) 340-5949

If to Planning Commission: The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
Attention: Planning Director

with a copy to: The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
Attention: Associate General Counsel

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant and the Planning Commission have signed, sealed and delivered this Declaration as their own free act and deed as of the day and year first written above.

Witness/Attest

Declarant:

HOME PROPERTIES FALKLAND CHASE, LLC.,
a Delaware limited liability company, formerly known as
Falkland Partners, LLC

By: HOME PROPERTIES, L.P.,
a New York limited partnership,
its sole member

By: HOME PROPERTIES, INC.
a Maryland corporation,
its general partner

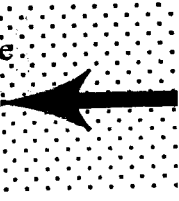
By: *[Signature]*
Name: *Donald R. Hague*
Title: *Senior Vice President/Development*

Witness/Attest

Planning Commission:

**MARYLAND-NATIONAL CAPITAL PARKING AND
PLANNING COMMISSION,**
a body corporate and politic created and existing under the
laws of the State of Maryland

By: *[Signature]*
Patricia Colihan Barney
Executive Director



Barbara Walsh
Barbara Walsh
Secretary-Treasurer

Acting

[Signature]
Approved for legal sufficiency
M-NCPPC Office of General Counsel

State of VIRGINIA

County of FAIRFAX

I HEREBY CERTIFY that on this 3RD day of JULY, 2008, before me, a Notary Public in and for the State and County aforesaid, personally appeared DONALD R. HAGUE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as SENIOR VICE PRESIDENT / ^{DEVELOPER} of Home Properties, Inc., a Maryland corporation and general partner of Home Properties, L.P., a New York limited partnership and sole member of Home Properties Falkland Chase, LLC, a Delaware limited liability company, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said corporation for the purposes therein contained.

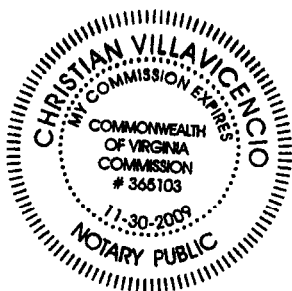
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Christian Villavicencio

Notary Public

My Commission Expires: 11-30-2009

[NOTARIAL SEAL]

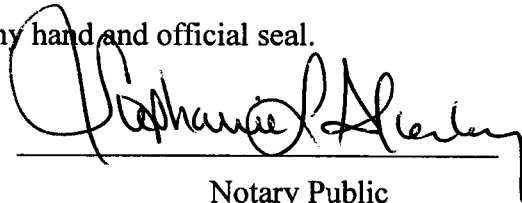


State of Maryland

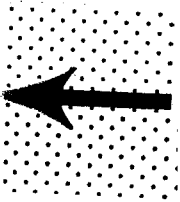
County of Montgomery

I HEREBY CERTIFY that on this 2nd day of August, ~~2008~~²⁰¹⁰, before me, a Notary Public in and for the State and County aforesaid, personally appeared Patricia Colman Barney, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as Executive Director of Maryland-National Capital Parking and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said body for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



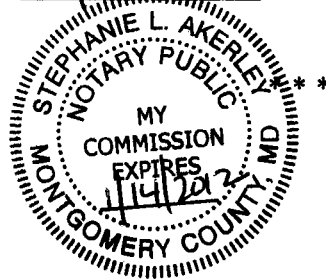
 Notary Public



My Commission Expires:

1/14/2012

[NOTARIAL SEAL]



ATTORNEY'S CERTIFICATION

I hereby certify that I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this Declaration was prepared by me or under my supervision.


Andrew M. Goldstein

EXHIBIT "A"
(Description of North Parcel)

(See attached)

PART THREE:

Being a portion of Parcel #4 as shown on a Plat of Street Dedication recorded among said Land Records in Plat Book 13 as Plat No. 851 and being more particularly described as follows:

BEGINNING at an iron pipe found at the Southwesterly corner of Parcel #3, Rosemary Woods as shown on a Plat recorded among the Land Records in Plat Book 70 as Plat No. 6645 and being on the Easterly right of way line of 16th Street, 120 feet wide; thence departing said 16th Street and binding on said Parcel #3, Rosemary Woods

- 1) North 65 degrees 36' 39" East, 409.65 feet to an iron pipe set; thence
- 2) North 66 degrees 45' 39" East, 43.76 feet to an iron pipe set at the Northwesterly corner of a Declaration of Taking by The Washington Metropolitan Area Transit Authority and described in Part 1 of Parcel MB309 of a deed recorded among said Land Records in Liber 4433 at folio 386; thence departing said Parcel #3, Rosemary Woods and binding on said Declaration of Taking Parcel
- 3) South 45 degrees 40' 35" East, 305.04 feet to a point; thence
- 4) South 44 degrees 19' 24" West, 6.00 feet to a point; thence
- 5) South 45 degrees 40' 35" East, 16.45 feet to a point; thence

- 6) North 89 degrees 58' 55" East, 17.66 feet to a point; thence
- 7) South 00 degrees 01' 05" East, 17.25 feet to a point; thence
- 8) South 45 degrees 40' 35" East, 17.11 feet to a point; thence
- 9) North 44 degrees 19' 24" East, 5.00 feet to a point; thence
- 10) South 45 degrees 40' 35" East, 267.96 feet to an iron pipe set on a Northwesterly line of Parcel No. 6 as shown on a Plat entitled "Parcels Nos. 6 & 7, a Division of Parcel No. 5, Property of Blair Management Corporation" and recorded among said Land Records in Plat Book 14 as Plat 938; thence departing said Declaration of Taking Parcel and binding on said Parcel No. 6;
- 11) North 89 degrees 58' 02" West, 90.36 feet to an iron pipe set; thence
- 12) South 00 degrees 01' 58" West, 181.04 feet to an iron pipe set on the Northerly right of way line of East West Highway, variable width; thence departing said Parcel No. 6 and binding on said East West Highway
- 13) 147.44 feet along the arc of a non-tangent curve to the left, having a radius of 868.51 feet and a chord bearing and distance of North 71 degrees 19' 46" West, 147.26 feet to a point; thence
- 14) North 13 degrees 47' 45" East, 3.00 feet to a point; thence
- 15) North 78 degrees 50' 17" West, 183.95 feet to a point; thence
- 16) North 89 degrees 56' 21" West, 256.34 feet to a point; thence
- 17) South 00 degrees 03' 39" West, 9.05 feet to a point; thence
- 18) North 85 degrees 21' 01" West, 173.84 feet to a point; thence
- 19) North 44 degrees 36' 42" West, 35.68 feet to a point on the Easterly right of way line of said 16th Street; thence departing said East West Highway and binding on said 16th Street
- 20) North 00 degrees 01' 59" East, 319.95 feet to the point of beginning containing 328,846 square feet or 7.54927 acres of land, more or less.

TAX ID NO. 13-959802

TOGETHER WITH a non-exclusive easement and right of way for purposes of parking and Ingress and egress over the property, more particularly described as "Easement East Center Line" as set forth in Amendment to Declaration of Easements, Covenants and Related Agreements recorded in Liber 6956 at folio 126, re-recorded in Liber 6979 at folio 494.

EXHIBIT "B"

PROPOSED DEVELOPMENT COMMITMENTS

1. 12.5% of the final number of total units on the North Parcel shall be subject to the County's MPDU program.
2. 4.72% of the final number of total residential units on the North Parcel shall be subject to the County's workforce housing program for 20 years.
3. A number of units equal to 4.72% of the final number of total units on the North Parcel shall be subject to the County's workforce housing program for 20 years and located in existing buildings on the South and West Parcels.
4. The affordable units reserved for families with income less than 65% of the Annual Median Income ("AMI") at Woodleaf Apartments in Silver Spring will be extended through 2029 and the number of units subject to the Program adjusted such that it equals 4.63% of the final number of total units on the North Parcel.
5. A 1+-acre green area running through the South Parcel shall be designated as off-site public use space to be improved by Declarant by stream restoration, landscaping, pathways, entrances to East-West Highway, 16th Street and Colesville Road, and include signage, seating areas and an educational trail with interpretative panels. A public use easement shall be placed on this area once the improvements are complete.
6. The streetscape along the East-West Highway frontage of the North Parcel shall provide sufficient right of way for, and Declarant shall construct, a five-foot wide brick public sidewalk and a ten-foot wide bicycle path separated from the street by a five-foot brick area with tree pits.
7. A tenant relocation program for those tenants in the North Parcel who were tenants prior to August 1, 2006, to include the following:
 - Waiver of application fees and transfer security deposits from a North Parcel apartment to any other Declarant-owned apartment for residents in good standing. For residents in good standing who opt to move to an apartment not owned by the Declarant, Declarant will pay any reasonable application fee and security deposit offset by any security deposit refund due from Falkland.
 - Payment of \$500 of North Parcel residents' relocation expenses (moving, utility, hook-up, etc.). Once formal notice has been given that a resident must relocate, that resident would receive the assistance mentioned above, as well as being entitled to all rights under Montgomery County Code and Regulations including relocation assistance equal to two months' rent.

- Residents of the North Parcel who relocated to the South or West Parcels will continue to pay their current rent for the remainder of their lease term (e.g., a resident of the North Parcel who is paying \$1175 for a 1-bedroom unit with a lease that expires in May 2008 would continue to pay \$1175 for a South or West Parcel 1-bedroom unit through May 2008).

8. Architectural standards addressing the following:

- percent of glass to solid wall area on the exterior of the buildings
- acceptable exterior building materials for the buildings
- an acceptable range of widths of the floor plates for any building over four stories

Prior to filing its Revised Development Plans, Declarant shall consult and endeavor to reach agreement with the Planning Director on the above items. Declarant shall not contest the authority of the Planning Board to condition approval of the Revised Development Plans upon standards setting forth the percent of glass to solid wall area on the exterior of the building, acceptable exterior building materials, or the width of floor plates for any building over four stories. The foregoing will not be construed to prevent Declarant from advocating its position with respect to or contesting the specific details of the architectural standards.

9. Structured parking shall not be visible from street except for necessary egress and ingress areas, ventilation and similar equipment.
10. Surface parking shall be limited to curbside locations.
11. All commercial and/or residential buildings shall be certified LEED Silver or the equivalent and Declarant shall make commercially reasonable efforts to achieve LEED certified gold or its equivalent.
12. Each residential or mixed use residential building containing residential units shall contain the following minimum unit mix: 10% efficiency, 10% one bedroom, 10% two bedroom, and 7.5% three bedroom.
13. Commercial space shall be provided along the East-West Highway frontage.
14. 65% of the lot frontage along East-West Highway shall have buildings that front on East-West Highway and of this 65% a minimum of 50% of the ground-level space shall have retail uses.
15. Prior to filing the Project Plan component of the Revised Development Plans, Declarant shall make commercially reasonable efforts to secure a grocery store user so that a grocery store may be included in the Revised Development Plans.

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this “**Declaration**”) is made this ____ day of _____, ~~2014,2015~~, by ~~HOME PROPERTIES FALKLAND CHASEROAD RESIDENTIAL, LLC~~, a ~~Delaware~~ _____ limited liability company, ~~formerly known as Falkland Partners, LLC~~ (“**Declarant**”), for the benefit of the **MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**, a body corporate and politic created and existing under the laws of the State of Maryland (the “**Planning Commission**”).

RECITALS:

A. Declarant is the fee simple owner of a parcel of land located in Montgomery County, Maryland described on **Exhibit “A”** to this Declaration (the “**North Parcel**”). The North Parcel is part of a larger tract of land owned by Declarant.

B. The North Parcel is currently improved by several apartment buildings (the “**North Parcel Buildings**”) and related facilities.

C. Pursuant to a Declaration of Restrictions Covenant dated August 2, 2010 and the Amendment to Declaration of Restrictive Covenants dated May 3, 2013 (collectively the “Prior Declaration”) by and between the prior owners of the North Parcel and the Planning Commission, the prior owner agreed to provide substantial public benefits in connection with its redevelopment of the North Parcel.

D. The subject Declaration is intended to supersede the Prior Declaration.

E. ~~C. The~~ Pursuant to the Prior Declaration, owner the North Parcel and North Parcel Buildings ~~are identified~~ were removed as an historic resource ~~in from~~ the Locational Atlas and Index of Historical Sites in Montgomery County, Maryland (the “**Historical Atlas**”) maintained by the Planning Commission in accordance with Chapter 24A of the Montgomery County Code. As such, the North Parcel and the North Parcel Buildings ~~are subject to being included as an historic site in the Master Plan for Historic Preservation adopted by Montgomery County (the “shall not be considered for designation in the Historical Master Plan”)~~.

E. ~~D.~~ Declarant has filed with the Montgomery County Planning Board of the Planning Commission (the “**Planning Board**”) an application for approval of a project sketch plan and amendments to the previously approved preliminary subdivision plan and site plan providing for the redevelopment of the ~~North Parcel~~. ~~Declarant intends to amend such plans and file a site plan covering the entire North Parcel (collectively, the “**Revised Development Plans**”) in connection with such redevelopment. The redevelopment of the North Parcel in accordance with the Revised Development Plans will necessarily require the removal of the North Parcel and North Parcel Buildings from the Historical Atlas, the elimination of the North Parcel and North Parcel Buildings from consideration for designation in the Historical Master Plan, and the actual demolition of the North Parcel Buildings. Declarant, in an effort to demonstrate that redevelopment of the North Parcel will provide substantial public benefits, shall proffer as part of its application for Planning Board approval of the Revised Development Plans the commitments by Declarant described in **Exhibit “B”** to this Declaration (the “**Proposed Developer Commitments**”). The Planning Board had adopted a resolution providing that if and when the Revised Development Plans are approved by the Planning Board, with or without condition, the North Parcel and North Parcel Buildings shall automatically be removed from the Historical Atlas, without the requirement of any further action by the Planning Board (except ministerial action to confirm and implement the removal). **Development Applications**”).~~

G. The removal of the North Parcel and North Parcel Buildings from the Historical Atlas and elimination from consideration in the Historical Master Plan was predicated on the redevelopment of the North Parcel providing substantial public benefits as set forth in Exhibit “B” of the Prior Declaration.

H. Consistent with the Prior Declaration and in order to ensure that the subject development conveys certain public benefits, Declarant does hereby agree in substance to all commitments set forth in the Prior Declaration, subject to the minor adjustments described in **Exhibit “B”** attached hereto (the “**Proposed Developer Commitments**”).

I. ~~E.~~ In furtherance of its contemplated redevelopment of the North Parcel and to maintain the current status of the North Parcel while the ~~Revised Development Plans~~ Applications are being prepared and processed, Declarant is willing to make certain voluntary covenants for the benefit of the Planning Commission as set forth below in this Declaration.

NOW, THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant declares and covenants as follows:

1. During the Forbearance Period (defined below), Declarant shall not demolish or substantially alter the exterior features of the North Parcel Buildings, including by neglect, without the prior approval of the Planning Board, except as may be reasonably necessary in the case of fire or other casualty, condemnation, or unsafe or hazardous condition or in connection with the construction or planned construction of public improvements on or about the North Parcel, including, without limitation, any public transit facilities. **“Forbearance Period”** means the period that (a) commences upon the date that ~~the Revised Development Plans~~Approvals are finally approved (beyond appeal) by the Planning Board, and ~~the North Parcel and North Parcel Buildings are removed from the Historical Atlas without having been included in the Historical Master Plan, and~~ (b) terminates upon the earliest to occur of the following: (i) issuance of a building permit in connection with the redevelopment of the North Parcel pursuant to the ~~approved Resided Development Plans~~Applications (the **“Development Commencement Date”**), (ii) ninety (90) days after Declarant notifies the Planning Board in writing that Declarant is abandoning the ~~Revised Development Plans~~Applications or otherwise abandoning its plans to develop the North Parcel in accordance with the Revised Development Plans (the **“Application Abandonment Date”**), or (iii) June 30, ~~2018~~2024 (the **“Forbearance Period Outside Termination Date”**). Nothing in this Declaration shall be deemed to prevent Declarant from electing at any time not to pursue the ~~Revised Development Plans~~Applications or not to proceed with the development of the North Parcel in accordance with the ~~Revised Development Plans~~Applications.

2. Declarant shall have the right, in its sole discretion, to extend the Forbearance Period beyond the Forbearance Period Outside Termination Date from time to time as Declarant may deem appropriate. Such extension shall be effected by Declarant recording an amendment to this Declaration in the Land Records setting forth the extension. In the event of any such extension, Declarant shall promptly furnish a copy of the amendment to the Planning Commission.

3. Despite the foregoing, if (a) neither the Development Commencement Date nor Application Abandonment Date have occurred by the end of the Forbearance Period, (b) Declarant has determined not to extend the then applicable Forbearance Period Outside Termination Date, and (c) this Declaration would otherwise expire on such Forbearance Period Outside Termination Date in accordance with the terms of Paragraph 1 above, this Declaration and the demolition and alteration restrictions applicable during the Forbearance Period shall nonetheless remain in full force and effect and shall automatically be extended until ninety (90) days after Declarant gives written notice to the Planning Commission advising that the Forbearance Period Outside Termination Date has passed without the Development Commencement Date having occurred and that the term of this Declaration will expire ninety (90) days from the date of the notice. Upon any termination of the Forbearance Period in accordance with this Declaration, this Declaration shall be deemed terminated and of no further force or effect, except that Paragraph 15 shall survive termination.

4. Nothing in this Declaration shall be deemed to prohibit or impair, or require the Planning Board's approval for, (a) any ordinary repairs or maintenance to the exterior of the North Parcel or North Parcel Buildings, (b) any landscaping work on or about the North Parcel, or (c) any work or alterations to the interior of the North Parcel Buildings.

5. Declarant agrees that the Proposed Developer Commitments may be incorporated by the Planning Board as conditions to approval of the ~~Revised Development Plans~~ Applications and that Declarant shall not object to such conditions, provided that such conditions are not greater in scope or more onerous to Declarant than the Proposed Developer Commitments as stated in **Exhibit "B"**.

6. This Declaration is made for the sole benefit of the Planning Commission and the Planning Commission shall have the sole right to enforce the terms of this Declaration. In the case of any breach or threatened breach of this Declaration, the Planning Commission may exercise any rights or remedies available at law or in equity for such breach, including, without limitation, a suit for specific performance or injunctive relief. No other person or entity may enforce this Declaration or shall have any right or remedy with respect to this Declaration. This Declaration is not intended to create, nor shall it be construed as creating, any rights in or for the benefit of the general public or any tenants of the North Parcel Buildings nor shall it affect or

benefit any real property outside of the North Parcel or the owners or tenants of such real property.

7. Declarant acknowledges that the ~~Revised Development Plans~~ Applications remain subject to review and approval by the Planning Commission according to its regulatory processes and that nothing in this Declaration obligates the Planning Commission to grant such approval. This Declaration shall not affect, in any manner whatsoever, any public action, review or approval process involving the Planning Commission or for which the Planning Commission is responsible, including, without limitation, any proceedings under the Subdivision Regulations. No representations or commitments have been made by the Planning Commission or anyone on behalf of the Planning Commission regarding the approval of the Revised Development Plans.

8. The covenants, agreements, rights, benefits, obligations and liabilities created in this Declaration shall be deemed to touch, concern, run with, and be binding upon the land with respect to the North Parcel. This Declaration shall bind Declarant and its successors and assigns and inure to the benefit of the Planning Commission and its successors and assigns (except that the Planning Commission shall not be entitled to assign its right to enforce this Declaration). This Declaration may be amended by an instrument in writing executed by Declarant, its successors or assigns, and recorded in the Land Records. All amendments shall require the written approval of the Planning Commission, except that amendments extending the Forbearance Period Outside Termination Date as provided in Paragraph 2 above shall not require such approval.

9. The liability and obligations of Declarant or any successor under this Declaration shall only apply to Declarant or such successor during the term in which it owns a fee simple interest in the North Parcel. When Declarant or any successor owner of the North Parcel ceases to own a fee simple interest in the North Parcel, the liability and obligations thereafter accruing under this Declaration (but not any accrued and unperformed liability or obligations) shall be the liability and obligations of its transferee in title to the North Parcel.

10. Declarant represents that it has all requisite power and authority to execute, deliver, and perform its obligations under this Declaration. This Declaration constitutes the legal, valid, and binding obligation of Declarant and is enforceable against it in accordance with its terms.

11. The Recitals set forth in this Declaration and all Exhibits attached to this Declaration are incorporated in and made a part of this Declaration.

12. No delay or omission by the Planning Commission in enforcing the provisions of this Declaration shall impair or be construed to be a waiver of any such right of enforcement.

13. This Declaration shall be governed by and construed in accordance with the laws of the State of Maryland, excluding choice of law principles.

14. Each provision of this Declaration is intended to be severable. If any term or provision of this Declaration shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Declaration and shall not affect the validity of the remainder of this Declaration.

15. Upon written request by Declarant from time to time, the Planning Commission shall execute, acknowledge, and deliver to ~~Home Properties~~Declarant a written statement certifying to Declarant and/or its transferees or mortgagees that, to the best of its knowledge, information, and belief, there are not outstanding defaults by Declarant under this Declaration (or specifying the details of any default by Declarant outstanding at that time) and addressing such other matters as may be reasonably requested by Declarant, its transferees or mortgagees. In addition, upon any termination of this Declaration, the Planning Commission shall execute, acknowledge, and deliver to Declarant such written instrument, in recordable form, as Declarant may request to confirm the termination of this Declaration and Declarant shall be entitled to record such instrument in the Land Records. Any document submitted by Declarant to the Planning Commission in accordance with this Paragraph shall be executed, acknowledged and delivered by the Planning Commission to Declarant within ten (10) business days after receipt by the Planning Commission. Documents executed by the Planning Commission under this Paragraph may be relied upon by Declarant and any prospective transferee or mortgagee of Declarant.

~~16.~~ All notices, requests, demands or other communications under this Declaration shall be in writing and deemed given (a) when delivered personally, with signed receipt of delivery, (b) on the day deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, (c) on the day deposited with a recognized overnight courier service which requires signed receipt of delivery (such as Federal Express), or (d) on the day transmitted by fax, provided that notice is also sent the same day by one of the foregoing methods of

delivery. In all events, such notices and communications shall be addressed as follows (or to such other address which a party may from time to time hereafter designate by notice given in accordance with this Paragraph):

If to Declarant:

_____ The JBG
Companies

445 Willard Avenue
Chevy Chase, MD 20815-3690
Attn: Mr. Rich Jordan

with a copy to:

_____ Patricia
A. Harris, Esq.

Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814

If to Planning Commission:

The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
Attention: Planning Director

with a copy to:

The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910
Attention: Associate General Counsel

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant and the Planning Commission have signed, sealed and delivered this Declaration as their own free act and deed as of the day and year first written above.

Witness/Attest

Declarant:

FALKLAND ROAD RESIDENTIAL, LLC

By: _____

Witness/Attest

Planning Commission:

**MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION,**
a body corporate and politic created and
existing under the laws of the State of
Maryland

By: _____

Barbara Walsh
Acting Secretary-Treasurer

~~Patricia Colihan Barney~~
~~Executive Director~~

* * *

State of _____

County of _____

I HEREBY CERTIFY that on this _____ day of _____, ~~2014,~~2015, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as _____ of ~~Home Properties, Inc., a Maryland corporation and general partner of Home Properties, L.P., a New York limited partnership and sole member of Home Properties Falkland Chase~~Falkland Road Residential, LLC, a Delaware _____ limited liability ~~company~~corporation, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

* * *

State of Maryland

County of Montgomery

I HEREBY CERTIFY that on this _____ day of _____, ~~2014~~, 2015, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, as _____ of Maryland-National Capital Park and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland, and acknowledged that he/she, being authorized to do so, executed the foregoing and annexed instrument as the act and deed of the said body for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I hereby certify that I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this Declaration was prepared by me or under my supervision.

Patricia A. Harris

EXHIBIT "A"
(Description of North Parcel)

(See attached)

EXHIBIT "B"

PROPOSED DEVELOPMENT COMMITMENTS

1. 12.5% of the final number of total units on the North Parcel shall be subject to the County's MPDU program.
2. 4.72% of the final number of total residential units on the North Parcel shall be subject to the County's workforce housing program for 20 years.
3. A number of units equal to 4.72% of the final number of total units on the North Parcel shall be subject to the County's workforce housing program for 20 years and located in existing buildings on the South and West Parcels. The Workforce Housing Units shall be designated prior to the issuance of the Use and Occupancy certificates for each phase on the North Parcel in proportion to the total number of units in the respective North Parcel phase. The Workforce Housing Units on the South and West Parcels must include the same proportion of one bedroom units and two bedroom units as provided in the market rate units on the South and West Parcels.
- ~~4. The affordable units reserved for families with income less than 65% of the Annual Median Income ("AMI") at Woodleaf Apartments in Sivler Spring will be extended through 2029 and the number of units subject to the Program adjusted such that it equals 4.63% of the final number of total units on the North Parcel.~~
4. ~~5.~~ A 1+-acre green area running through the South Parcel shall be designated as off-site public use space to be improved by Declarant by stream restoration, landscaping, pathways, entrances to East-West Highway, 16th Street and Colesville Road, and include signage, seating areas and an educational trail with interpretative panels. A public use easement shall be placed on this area once the improvements are complete.
5. ~~6.~~ The streetscape along the East-West Highway frontage of the North Parcel shall provide sufficient right of way for, and Declarant shall construct, a five-foot wide brick public sidewalk and a ten-foot wide bicycle path separated from the street by a five-foot bricklandscaped area with tree pits.
6. ~~7.~~ A tenant relocation program for those tenants in the North Parcel who were tenants prior to August 1, 2006, to include the following:
 - Waiver of application fees and transfer security deposits from a North Parcel apartment to any other Declarant-owned apartment for residents in good standing. For residents in good standing who opt to move to an apartment not owned by the Declarant, Declarant will pay any reasonable application fee and security deposit offset by any security deposit refund due from Falkland.
 - Payment of \$500 of North Parcel residents' relocation expenses (moving, utility, hook-up, etc.). Once formal notice has been given that a resident must relocate, that resident would receive the assistance mentioned above, as well as being entitled to all rights under Montgomery County Code and Regulations including relocation assistance equal to two months' rent.
 - Residents of the North Parcel who relocated to the South or West Parcels will continue to pay their current rent for the remainder of their lease term (e.g., a resident of the North Parcel who is paying \$1,175 for a 1-bedroom unit with a

lease that expires in ~~May 2008~~ August 2015 would continue to pay \$1,175 for a South or West Parcel 1-bedroom unit through ~~May 2008~~ August 2015.)

7. ~~8.~~ Architectural standards addressing the following:
- percent of glass to solid wall area on the exterior of the buildings
 - acceptable exterior building materials for the buildings
 - an acceptable range of widths of the floor plates for any building over four stories

Prior to filing its ~~Revised Development Plans~~ Applications, Declarant shall consult and endeavor to reach agreement with the Planning Director on the above items. Declarant shall not contest the authority of the Planning Board to condition approval of the ~~Revised Development Plans~~ Applications upon standards setting forth the percent of glass to solid wall area on the exterior of the building, acceptable exterior building materials, or the width of floor plates for any building over four stories. The foregoing will not be construed to prevent Declarant from advocating its position with respect to or contesting the specific details of the architectural standards.

8. ~~9.~~ Structured parking shall not be visible from ~~street~~ existing streets except for necessary egress and ingress areas, ventilation and similar equipment.
9. ~~10.~~ Surface parking shall be limited to curbside locations.
10. ~~11.~~ All commercial and/or residential buildings shall be certified LEED Silver or the equivalent and Declarant shall make commercially reasonable efforts to achieve LEED certified gold or its equivalent.
11. Irrespective of the ultimate residential mix, the MPDUs shall contain at a minimum 12.5% three bedroom units, the Workforce Housing Units shall contain at a minimum 13.5% three bedroom units, and the market rate units shall contain at a minimum 2.3% three bedroom units. The bedroom mix of the remaining efficiencies, one and two bedroom MPDU and Workforce Housing units must be in proportion to the efficiencies, one and two bedroom market rate units in compliance with Chapter 25A and 25B, as determined by DHCA.
12. ~~Each residential or mixed use residential building containing residential units shall contain the following minimum unit mix: 10% efficiency, 10% one bedroom, 10% two bedroom, and 7.5% three bedroom. Declarant shall extend until March 31, 2019 the Housing Opportunities Commission's bonds applicable to the 90 affordable units located throughout the Falklands development, including 13 such units on the North Parcel.~~
13. Commercial space shall be provided along the East-West Highway frontage.
14. 65% of the lot frontage along East-West Highway shall have buildings that front on East-West Highway and of this 65% minimum of 50% of the ground-level space shall have retail uses.
15. Prior to filing the ~~Project Plan component of the Revised Development Plans~~ Sketch Plan application, Declarant shall make commercially reasonable efforts to secure a grocery store user so that a grocery store may be included in the ~~Revised Development Plans~~ Applications.

Document comparison by Workshare Compare on Thursday, July 23, 2015
8:39:04 AM

Input:	
Document 1 ID	interwovenSite://DMS13/iManage/1742089/1
Description	#1742089v1<iManage> - DECLARATION OF RESTRICTIVE COVENANT
Document 2 ID	interwovenSite://DMS13/iManage/1742089/3
Description	#1742089v3<iManage> - DECLARATION OF RESTRICTIVE COVENANT v3
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	63
Deletions	80
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	155



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Clarence J. Snuggs
Director

August 27, 2015

Mr. Neil Braunstein
Area 1 Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Falkland North
Sketch Plan No. 320150020
Preliminary Plan Amendment No. 12007056A
Site Plan Amendment No. 82012005A

Dear Mr. Braunstein:

The Montgomery County Department of Housing and Community Affairs (DHCA) has reviewed the applicant's revisions to the above referenced Sketch Plan, Preliminary Plan Amendment and Site Plan Amendment and recommends Approval with the following condition:

- Change the Note (below the General Notes) on Sheet T-1 of the Site Plan to include the language referencing the Declaration of Restrictive Covenants that is currently included on Sheet C-2.1 of the Preliminary Plan (below the Parking Schedule).

In addition, please note that the Workforce Housing Units (WFH Units) are not provided under Chapter 25B of the County Code. These units have a 20-year control period instead of the 99-year control period required of rental WFH Units under Chapter 25B.

Sincerely,

Lisa S. Schwartz
Senior Planning Specialist

cc: Elza Hisel-McCoy, Planning Department
Andrew M. Bradshaw, JBA

S:\Files\FY2014\Housing\MPDU\Lisa Schwartz\Falkland North DHCA Letter_8-27-2015.doc

Division of Housing

Affordable
Housing Program
FAX 240-777-3709

Multifamily Housing
Programs
FAX 240-777-3691

Landlord-Tenant Affairs
FAX 240-777-3691

Licensing & Registration Unit
240-777-3666
FAX 240-777-3699

100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240-777-0311 • www.montgomerycountymd.gov/dhca





RECEIVED

JAN 05 2015

MONTGOMERY PLANNING/Area 1

DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Al R. Roshdieh
Acting Director

December 30, 2014

Neil Braunstein, Planner Coordinator
Area 1 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Sketch Plan No. 320150020
Preliminary Plan No. 12007056A
Falkland North

Neil:
Dear Mr. Braunstein:

We have completed our review of the preliminary plan dated December 15, 2014. This plan was reviewed by the Development Review Committee at its meeting on December 22, 2014. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

PREVIOUS COMMENTS FROM MCDOT LETTER DATED June 5, 2007 APPLY UNLESS AMENDED BELOW.

1. Access and improvements along East West Highway (MD 410) and 16th Street (MD 390) as required by the Maryland State Highway Administration.
2. Provide streetscaping standards on 16th Street (MD 390) and East West Highway (MD 410) per the *Silver Spring Streetscape Plan*.
3. Continue coordination with Metro Plaza Silver Spring (12009038A) project regarding access to the site.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor · Gaithersburg, Maryland 20878
Main Office 240-777-2190 · TTY 240-777-6013 · FAX 240-777-2080
trafficops@montgomerycountymg.gov

4. Maintain a minimum five (5) foot wide continuous open sidewalk (no grates) along all public streets.
5. Upgrade pedestrian facilities at intersections along the site frontage to comply with current ADA standards.
6. The owner will be required to submit a recorded covenant for the future dedication of right-of-way for the Purple Line prior to DPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
7. Prior to the issuance of any building permits by MCDPS, the applicant will need to execute a Traffic Mitigation Agreement with MCDOT and MNCPPC. Within MCDOT, the applicant should coordinate with Ms. Sandra Brecher, Chief of the Division of Transit Services/Commuter Services Section. Ms. Brecher may be contacted at 240-777-8383.

The TMAg should include but not be limited to the following:

- a. Car Sharing Parking. Provide two (2) car sharing vehicle parking spaces in highly visible, preferentially-located spots in each parking structure.
- b. Electric Vehicle Car Charging Stations. Provide at least two (2) electric vehicle charging stations on site or other EV charging arrangements acceptable to MCDOT. Applicant must comply with applicable laws regarding provision of car charging stations.
- c. Bicycle Facilities. Significant bicycle activity will likely occur at this site due to its proximity to local bike trails. Provide sufficient bicycle parking spaces to accommodate proposed residential and non-residential uses in each phase per Zoning Ordinance. Bike racks/lockers should be located in weather-protected, highly visible/active locations. Consider providing secure bicycle storage area in garages for resident use (bike cage) as well as a small bicycle repair station for resident use.
- d. Bikesharing Station. See comment number 8 below.
- e. Real Time Transit Information electronic display. Plan to incorporate a display screen (monitor) in each residential lobby at each phase, to enable information to be readily accessed by building residents, employees, visitors, etc. Applicant will reimburse the County for the cost of County-provided monitors, or, alternatively, a display can be incorporated into planned lobby display monitors/software system for buildings.
- f. Static Information Displays - Incorporate static display space into residential lobbies and other high pedestrian activity areas, including near the grocery store,

to provide opportunity for display of transit and other alternative transportation information. Information on alternatives should also be displayed in parking facilities and in elevators.

8. The Statement of Justification states that the Project will incorporate a Capital Bikeshare station to further promote alternative modes of transportation. The Applicant will be required to provide a site and contribute to the cost of bikeshare facilities and service in the Silver Spring CBD in accordance with MCDOT policy. The location of the bikeshare station must be readily accessible by residents, employees and visitors/shoppers at the Project. The location will be selected by the Applicant and MCDOT, based upon the requirements of the bikesharing system and in a highly-visible, convenient and well-lit location on the Project, and if possible should be proximate to the grocery store and shared use path. Applicant will be required to take other actions in concert with the TMD to promote use of bikesharing among residents, employees and visitors at the Project.
9. We recommend the following design elements intended to facilitate the use of non-auto modes of transportation be incorporated in the building design:
 - a. Design building frontages along Sixteenth Street and East West Highway to provide two-way visibility for transit vehicles, shuttles and taxis
 - b. Provide electric and water connections in outdoor settings to enable outreach events to be staged more readily.
 - c. Provide kiosks in busy outdoor areas to provide opportunity for information displays and assistance.
 - d. Provide concierge/reception desk with an area where transit information and pass sales can be transacted – e.g., obtaining transit information, loading of SmarTrip cards.
10. Private common driveways and private streets shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. The composition, typical section, horizontal alignment, profile, and drainage characteristics of private common driveways and private streets, beyond the public right-of-way, shall be approved by the Planning Board during their review of the preliminary plan.
11. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by the two common driveways.

12. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and /or open space areas prior to DPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
13. We recommend that the applicant coordinate with Ms. Joana Conklin, the BRT Development Manager for Montgomery County, regarding the Purple line. Ms. Conklin can be reached at joana.conklin@montgomerycountymd.gov or at 240-777-7155.
14. We recommend that the applicant coordinate with Mr. Donald Tusing of the Maryland Transit Authority to coordinate the conceptual layout of Private Street "A" with the Purple Line project. Mr. Donald Tusing may be reached at dtusing@rkk.com or at 410-462-9238.
15. Coordinate with Patricia Shepherd of our Transportation Engineering Section on shared use path along MD 410. Ensure that shared use path is maintained along the MD 410 site frontage. Ms. Shepherd can be reached at patricia.shepherd@montgomerycountymd.gov or at 240-777-7231.
16. At or before the permit stage, please coordinate with Ms. Stacy Coletta of our Division of Transit Services to coordinate improvements to the RideOn bus facilities in the vicinity of this project. Ms. Coletta may be contacted at 240 777-5800.
17. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Transportation Systems Engineering Team at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
18. At or before the permit stage, please coordinate with Mr. Joseph Madison of our Division of Parking Management to coordinate the impacts on public parking facilities in the vicinity of this project. Mr. Madison may be contacted at 240 777-8740.

Neil Braunstein
Preliminary Plan No. 12007056A
December 30, 2014
Page 5

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Ms. Rebecca Torma, our Development Review Senior Planning Specialist for this project at rebecca.torma@montgomerycountymd.gov or (240) 777-2118.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

m:/subd/tormar01/developments/silver spring cbd/12007056A, Falkland North Preliminary plan letter amend

cc: Frank Craighill; Falkland Road Residential LLC
Andrew Bradshaw; Johnson – Bernate –Associates, Inc.
Patricia Harris; Lerch, Early & Brewer, Chtd.
Matthew Folden; M-NCPPC Area 1
Scott Newill; MDSHA AMD
Donald Tusing; MTA
Rebecca Torma; MCDOT DTEO
Preliminary Plan folder
Preliminary Plan letters notebook

cc-e: Catherine Conlon; M-NCPPC DARC
Joana Conklin; MCDOT DO
Patricia Shepherd; MCDOT DTEO
Bruce Mangum; MCDOT DTEO
Sandre Brecher; MCDOT DTS
Stacy Coletta; MCDOT DTS



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

January 28, 2015

Mr. Andrew Bradshaw, P.E.
Johnson Bernat Associates, Inc.
205 North Frederick Road, Suite 400
Gaithersburg, MD 20877

Re: Stormwater Management **CONCEPT** Request
for Falkland North
Preliminary Plan #: 120070560
SM File #: 267895
Tract Size/Zone: 7.55/CBD-R-1
Total Concept Area: 7.55
Lots/Block: N/A
Parcel(s): 393
Watershed: Rock Creek

Dear Mr. Bradshaw:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via the use of green roof, micro biofiltration, and structural filtration.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way

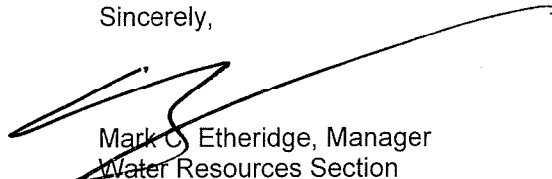
255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY
www.montgomerycountymd.gov

Mr. Andrew Bradshaw, P.E.
January 28, 2015
Page 2 of 2

unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-6309.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: tew CN 267895

cc: C. Conlon
SM File # 267895

ESD Acres:	4.96ac
STRUCTURAL Acres:	2.59ac
WAIVED Acres:	N/A



MARYLAND TRANSIT ADMINISTRATION

MARYLAND DEPARTMENT OF TRANSPORTATION

Martin O'Malley, Governor • Anthony G. Brown, Lt. Governor
Beverley K. Swaim-Staley, Secretary • Ralign T. Wells, Administrator

November 3, 2010

Mr. Neil Braunstein, AICP
Maryland-National Capital Park and Planning Commission
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Braunstein:

I am writing to provide the Maryland Transit Administration's (MTA) recommendation to the Montgomery County Planning Board for the proposed Falkland North Preliminary Plan. Our recommendation requests that a portion of the subject property be dedicated for the use of the Purple Line light rail line, and that a portion of the subject property also be dedicated as a permanent easement for providing access to the trackway of the Purple Line.

As you are aware, Maryland Governor Martin O'Malley announced the Locally Preferred Alternative (LPA) for the Purple Line on August 4, 2009 and the project is now advancing through the Federal New Starts evaluation process. In terms of the Falkland North site, the LPA is a light rail double track line that would be located in the Silver Spring area along the south side of the CSX and Metro corridor, and specifically across the Falkland North site proposed for redevelopment.

The MTA has met with the property owner and their development team, including Mr. Michael Eastwood of Home Properties, on a number of occasions to share with him and his associates the Purple Line conceptual plans that would traverse the Falklands property, thereby impacting a portion of the proposed development on the Falkland North site. We have been coordinating with representatives of Home Properties to develop a design that would allow for the construction and operation of the Purple Line, in addition to completion of the Falklands North development. We appreciate their willingness to provide the portion of their property required for the Purple Line and their cooperative spirit in working closely with us.

As a result of these discussions, the recommended area of dedication based on the conceptual alignment of the Purple Line and the space required for access during construction and future maintenance is shown on the attached Falkland North Revised Preliminary Plan. The alignment through this area is constrained due to setback requirements from CSX and the requirements for a crash wall as well as the structure and

Mr. Neil Braunstein

Page Two

grades needed to cross over the railroad tracks to enter the Silver Spring Transit Center. This recommended dedication line runs parallel to the Purple Line with an outer limit that measures 15 feet from the centerline of the southernmost track, resulting in an area with an approximate length of 619 feet and a width of 40 feet.

The easement area that is required to provide vehicular access to the dedicated area is 20 feet wide and approximately 75 feet long and ties into the site's access road at the northern corner of the site. The overall elevation and slope of the easement is to be coordinated with the developer. The elevation of the northern part of the easement must match the Purple Line's top of rail elevation and the slope must be such that a maintenance vehicle can reach the Purple Line's trackway from the site's access road. Vehicular access to the Purple Line is critical for construction and ongoing maintenance and is accommodated through this access point.

The vertical clearance over top of the Purple Line is 32 feet from the proposed top of rail of the Purple Line to the bottom of any proposed structure. The Purple Line is on a structure through the property because it is climbing to the level needed to cross over the Metro and CSX tracks. Therefore, any structure over the Purple Line would need to be 32 feet above the rail on the bridge structure, **not** 32 feet above the existing ground.

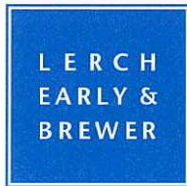
We urge the property owner and his developer to continue to coordinate with the MTA as their development plans for the site further advance and we would be glad to provide more detailed information as the design progresses. MTA looks forward to continue working with the Montgomery County Planning Board and staff planners in advancing the Purple Line plans. Please do not hesitate to contact me at 410-767-3694 or at mmadden@mta.maryland.gov, if you have any further questions or need additional information.

Sincerely,



Michael D. Madden
Chief, Project Development
Office of Planning

cc: Tom Autrey, Transportation Planner, Montgomery County M-NCPPC
Cherian Eapen, Montgomery County, M-NCPPC
Gary Erenrich, Special Assistant to Director, Montgomery County DOT



ideas that work

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Attachment E

July 6, 2015

BY ELECTRONIC DELIVERY

Mr. Marco Fuster
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Falkland North – Tree Variance Request and Justification
Sketch Plan No. 320150020, Preliminary Plan Amendment No.
12007056A and Site Plan Amendment No. 82012005A

Dear Mr. Fuster:

We are submitting this variance request on behalf of Falkland Road Residential, LLC, an affiliate of The JBG Companies, the Applicant in the above referenced Sketch Plan, Preliminary Plan Amendment and Site Plan Amendment (collectively, the "Application"). We hereby request a variance from the provisions of Maryland Annotated Code, Natural Resources Article, Section 5-1607(c)(2)(iii) pursuant to Section 22A-21(b) of the Montgomery County Code (the "Code").

Background

The Applicant is the owner of the property located at 1545 N. Falkland Lane in the northeast quadrant of the intersection of 16th Street and East West Highway (the "Intersection"), more particularly known as a portion of Parcel 4, as shown on Plat Book 13, Plat No. 851 (the "North Parcel"). The North Parcel is part of a larger residential development known as the Falkland Chase. Falkland Chase is comprised of three parcels – the remaining two parcels are located in the southeast quadrant (the "South Parcel") and southwest quadrant (the "West Parcel") of the Intersection (collectively, the North and South Parcels are referred to hereinafter as the "Property"). The South Parcel and West Parcel were added to the Master Plan for Historic Preservation on March 31, 2009. The North Parcel has been removed from the Locational Atlas.

The Montgomery County Planning Board (the "Planning Board") approved a Project Plan, Preliminary Plan and Site Plan for the Property in 2010 and 2012 (the "Prior Approvals"). A Natural Resource Inventory/ Forest Stand Delineation (NRI/FSD) was originally approved on

January 12, 2010. In connection with the Prior Approvals, the Planning Board approved a variance for the removal/ disturbance of 33 specimen trees.¹

After acquisition of the Property and consideration of market conditions, the Applicant determined that a redesigned project was more appropriate at this location. The Applicant intends that the project will be developed in three or more phases. As such, in connection with the proposed Application, the Applicant has submitted a revised NRI/FSD, which was approved on May 27, 2014. The Applicant is now submitting a revised variance request for approval for the removal/ disturbance of 31 affected trees on the Property, including: the removal of 23 trees (which includes three (3) trees that have already been removed due to poor health or acts of God); disturbance of seven (7) trees; and the transplant of one (1) tree (collectively, the "Subject Trees"). The Subject Trees to be removed/ disturbed are discussed in greater detail below.

A. South Parcel

The South Parcel is not included in the Application for purposes of development. Because the South Parcel is a "historic site," a variance under Section 22A-21(b) of the Code will be required for any tree disturbance on the South Parcel. In connection with the proposed development on the North Parcel, the Applicant is proposing certain off-site improvements on the South Parcel for ADA improvements and adjustments to the existing curb-line along the road frontage. In connection with these improvements, the Applicant requests a variance for the disturbance of seven (7) trees and the removal of one (1) tree on the South Parcel (the "South Parcel Variance"). The South Parcel Variance trees are identified on the attached chart (Exhibit "A"). The Applicant will use specialized construction techniques in an effort to retain the one (1) South Parcel Variance tree proposed to be removed. However, in the event these construction techniques are unsuccessful, the Applicant will provide mitigation plantings for the removal of one (1) South Parcel Variance tree. In connection with the overall development of the North Parcel, the Applicant will also be making certain improvements to the South Parcel that will focus on the restoration and beautification of the stream. As Staff has agreed, the South Parcel stream restoration will occur in connection with a later phase of the North Parcel development and therefore the requisite variance for the stream restoration will be required in connection with the site plan approval of that subsequent phase.

¹ On December 14, 2010, the Planning Board approved a variance for the removal of 25 specimen trees and subsequently expanded the variance to allow critical root disturbance of eight (8) additional specimen trees, on June 28, 2012.

B. North Parcel

On the North Parcel, the Applicant requests a variance to allow for the removal of 22 trees, including: 19 additional Specimen Trees currently having a diameter of 30 inches or more, or a diameter of 75 percent or more of the State champion for that species and three (3) Specimen Trees that have already been removed since the last approval due to poor health and/or acts of god. Additionally, the Applicant requests approval to transplant one (1) Champion tree with a diameter of approximately 10.5 inches. (Collectively, the "North Parcel Variance"). The North Parcel Variance trees are identified on the attached chart (Exhibit "B").

As explained more fully below, retention of the trees proposed to be removed would result in undue hardship to the Applicant. The peculiar conditions of the Property and the nature of the proposed improvements justify granting the Variance pursuant to Section 22A-21(b) of the Code.

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

The Property is located within an urbanized area of Montgomery County in the vicinity of dense multi-family and commercial development. The Property is currently improved with low-rise brick garden style apartment buildings (constructed in the 1930's) and associated surface parking. Due to the age of the development, a number of large trees currently exist on the Property.

The Property is located within the Silver Spring Central Business District ("CBD"), and is within 800 feet of the Silver Spring Metro and MARC commuter rail station. As such, the Property provides an excellent opportunity for infill re-development at a density reflective of its location in the Silver Spring CBD and within a short walking distance of various transit options. The Property is currently zoned CR-3.0, C-0.75, R-3.0, H-145T, which reflects the appropriateness of the Property for relatively high-density mixed-use development.

The Approved and Adopted Silver Spring Central Business District and Vicinity Sector Plan (the "Sector Plan") has six main themes that are intended to guide the vision for the Silver Spring CBD, including: a transit-oriented downtown, a commercial downtown, a residential downtown, and a pedestrian friendly downtown. The proposed Application reflects the type of well-designed, mixed-use development that the Sector Plan envisions for this Property. Due to the urban nature of the Property and the dispersal of Specimen Trees throughout the Property, the mixed-use, pedestrian friendly, transit-oriented development recommended in the Sector Plan simply cannot be accommodated if the Subject Trees could not be removed. The transit-oriented development envisioned for this Property necessitates the construction of below-grade structure parking, which can only be accommodated with the removal of certain Specimen Trees.

- (2) *Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Because of the dispersal of trees throughout the Property, the inability to remove the Subject Trees would prevent the Applicant from developing the Property in a manner that is consistent with the Sector Plan. It would also deprive the Applicant of the opportunities enjoyed by others with similar properties in the CR Zone and in urban areas like Silver Spring. As the Planning Board previously determined, in granting the prior variance, "any redevelopment of this site would require similar levels of disturbance and tree loss."

- (3) *Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance; and*

The variance will not violate state water quality standards or cause measurable degradation in water quality. The Subject Trees are not located within a stream buffer, wetland or special protection area. The Property currently contains no stormwater management on-site. The provision of stormwater management facilities on the Property in connection with the proposed project ensures that the development will not result in an increase in the quantity of Stormwater runoff and that the stormwater quality associated with the redeveloped areas will be addressed. The project will comply with the requirements of Chapter 19 of the Montgomery County Code. Applicable requirements under Chapter 19 are addressed in a Concept Stormwater Management Plan approved by the Montgomery County Department of Permitting Services ("DPS") on January 28, 2015. (See Exhibit "C"). As illustrated on the Concept Stormwater Management Plan, the project will meet the required stormwater management goals via the use of green roof, micro biofiltration and structural filtration.

The current Maryland Department of the Environment (MDE) Stormwater Management regulations that Montgomery County has adopted require the use of environmental site design (ESD) techniques to treat the runoff from 1 inch of rainfall on all new developments, where stormwater management is required. Per MDE's 2000 Maryland Stormwater Design Manual, "[t]he criteria for sizing ESD practices are based on capturing and retaining enough rainfall so that the runoff leaving the site is reduced to a level equivalent to a wooded site in good condition[.]" The proposed stormwater management plans for the Property will meet this standard with the removal of and impact to the identified Subject Trees. Therefore, the variance will not affect water quantity standards and no measurable degradation in water quality will be experienced because effective mitigation measures are being provided. Additionally, the proposed development provides significant new landscaping and green areas on the Property.

(4) Provide any other information appropriate to support the request.

Several trees have already been removed since the last approval due to poor health and/or acts of god. Thus, although the proposed variance differs slightly from the prior variance approved for the Property, it is in effect a re-affirmation of the prior variance approval.

All efforts have been made to save Specimen Trees on the Property, where possible. Given the relatively small size, the Applicant will transplant the one existing champion Hawthorn tree to the South Parcel. However, the creation of multiple "tree save" areas on the Property was ultimately impossible, given the necessity of providing below-grade parking and site improvements in a development of this nature, which is in such close proximity to the Metro. The proximity of the proposed buildings to the roots of the trees along the northern property line, and the regrading that will likely be required on-site, makes it impossible to save these Subject Trees. Likewise, it is impossible to save the Subject Trees along 16th Street and East-West Highway due to the need to create a more accessible and wider sidewalk, to promote the Sector Plan's goal of fostering pedestrian activity.

To mitigate the loss of the Subject Trees, the Applicant is proposing on-site plantings. The Project will accommodate all mitigation on-site, at a ratio of 25%. The on-site plantings will provide various environmental benefits and tree canopy that will compensate for the loss of the Subject Trees.

In conformance with Section 22A-21(d) of the Code, the Variance will not confer a special privilege on the Applicant that would be denied to others. Rather, as discussed above, the Variance will prevent the deprivation of rights to the Applicant that have been enjoyed by others similarly situated. The need for the Variance does not arise out of actions by the Applicant, but rather site conditions established over 50 years ago. Moreover, the need for the variance does not arise from a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

Conclusion

We believe the foregoing, as well as the information contained in the Preliminary Forest Conservation Plan and Amendments, clearly demonstrate that the grant of the Variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If you have any questions or require any additional information for your review of this request, please feel free to contact me. We appreciate your consideration of this request.

Mr. Marco Fuster
July 6, 2015
Page 6

Very truly yours,

LERCH, EARLY & BREWER, CHTD.

Patricia A. Harris
-ELG

Patricia A. Harris

Attachments

EXHIBIT "A"

Exhibit 'A'

Specimen Trees on South Parcel - E/W Highway Frontage

Symbol	Botanical / Common Name	DBH	Condition	% CRZ Impacted	Status
*1	Quercus rubra / Northern Red Oak	31	Fair	1%	To remain
*3	Ulmus americana / Elm	38	Very poor	4%	To remain
*4	Tilia cordata / Linden	18	Good	65%	To be removed, however, every effort will be made to retain this tree using specialized construction techniques such as root protection matting, raised sidealk, etc. (see Sheet 3) If unsuccessful, mitigation planting of one (1) 4.5" caliper tree to be planted on Southside Parcel 555
*15	Tilia cordata / Linden	15	Good	5%	To remain
*17	Prunus species / Ornamental Cherry	28	Fair	18%	To remain
*18	Tilia cordata / Linden	15	Good	10%	To remain
*19	Tilia cordata / Linden	16	Good	12%	To remain
*20	Tilia cordata / Linden	16	Good	20%	To remain
* Forest Conservation Variance Trees (located on Historic Parcel and/or greater than 30")					

EXHIBIT "B"

Exhibit 'B'

Specimen Trees Greater than 30" DBH Requiring Variance

Symbol	Botanical / Common Name	DBH	Condition	Status
*B	Pinus strobus / White Pine	30"	Good	To be removed
*C	Quercus rubra / Northern Red Oak	32"	Good	To be removed
*D	Removed	was 40"		Removed w/o documentation
*E	Liriodendron tulipifera / Tulip Poplar	38"	Good	To be removed
*F	Quercus rubra / Northern Red Oak	36"	Good	To be removed
*H	Liriodendron tulipifera / Tulip Poplar	42"	Good	To be removed
*J	Liriodendron tulipifera / Tulip Poplar	31"	Good	To be removed
*K	Acer negundo / Box Elder	32"	Good	To be removed
*L	Removed	was 35"		Removed w/o documentation
*M	Liriodendron tulipifera / Tulip Poplar	36"	Poor - canopy dieback and crack in trunk, hazardous	To be removed
*N	Liriodendron tulipifera / Tulip Poplar	44"	Poor - dieback, bark and surface root damage, hazardous	To be removed
*P	Quercus rubra / Northern Red Oak	39.5"	Good	To be removed
*Q	Quercus palustris / Pin Oak	37.5"	Good - climbing spur damage and stump cut branches	To be removed
*R	Pinus strobus / White Pine	36"	Good	To be removed
*U	Pinus strobus / White Pine	36"	Good - stump cut branches in the	To be removed
*V	Ulmus americana / American Elm	42"	Good	Right-of-Way Tree to be removed. Mitigation to be provided in Right-of-Way
*W	Quercus rubra / Northern Red Oak	48"	Fair - decay in upper trunk	To be removed, however, every effort will be made to retain this tree (55% CRZ impacted by construction), Mitigation plantings to be planted on Parcel 3
*X	Liriodendron tulipifera / Tulip Poplar	40"/18"	Good - heavy cover of English Ivy	To be removed
*Y	Liriodendron tulipifera / Tulip Poplar	31"	Good	To be removed
*CC	Removed	was 31"		Removed w/o documentation
*DD	Pinus strobus / White Pine	30.5"	Good	To be removed
*FF	Prunus serotina / Black Cherry	30.5"	Good	To be removed
*WW	Crataegus nitida / Glossy Hawthorn	10.5"	Good	To be transplanted

* Forest Conservation Variance Trees

EXHIBIT "C"



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

January 28, 2015

Mr. Andrew Bradshaw, P.E.
Johnson Bernat Associates, Inc.
205 North Frederick Road, Suite 400
Gaithersburg, MD 20877

Re: Stormwater Management **CONCEPT** Request
for Falkland North
Preliminary Plan #: 120070560
SM File #: 267895
Tract Size/Zone: 7.55/CBD-R-1
Total Concept Area: 7.55
Lots/Block: N/A
Parcel(s): 393
Watershed: Rock Creek

Dear Mr. Bradshaw:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via the use of green roof, micro biofiltration, and structural filtration.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is **not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way

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montgomerycountymd.gov/311 240-773-3556 TTY

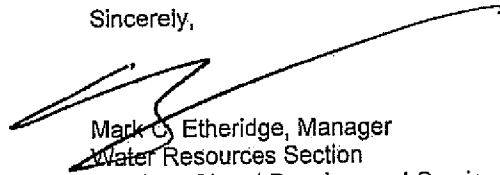
Exhibit "C"

Mr. Andrew Bradshaw, P.E.
January 28, 2015
Page 2 of 2

unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Thomas Weadon at 240-777-5309.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: tew CN 267895

cc: C. Conlon
SM File # 267895

ESD Acres:	4.96ac
STRUCTURAL Acres:	2.59ac
WAIVED Acres:	N/A



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

August 14, 2015

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

RE: Falkland North, ePlan 12007056A, NRI/FSD application accepted on 2/7/2014

Dear Mr. Anderson:

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



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

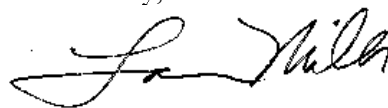
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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