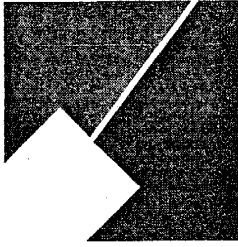


APPENDIX A

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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

Public Hearing Date: October 10, 2005

Date Mailed: FEB 15 2006

Action: Approved Staff
Recommendation

Motion of Commissioner Wellington,
seconded by Commissioner Robinson,
with a vote of 3-0;
Chairman Berlage and Commissioners
Wellington and Robinson voting in
favor. Commissioners Perdue and
Bryant were absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 120060060 (formerly 1-06006)
NAME OF PLAN: 1200 Blair Mill Road Condominiums

The date of this written opinion is FEB 15 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

I. INTRODUCTION

On July 12, 2005, 1200 BMR Associates, LLC ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-1 zone ("Application" or "Preliminary Plan"). The Application proposed to create 1 lot on 0.77 acres of land located in the southwest quadrant of the intersection of Blair Mill Road and Newell Street, in the Silver Spring CBD and Vicinity area ("Property" or "Subject Property"). The Application was designated Preliminary Plan #120060060 (formerly #1-06006). The Applicant filed a concurrent Project Plan application #9-06001 ("Project Plan") with the Planning Board. On October 10, 2005, the Preliminary Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

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

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

II. SUBJECT PROPERTY AND PROJECT DESCRIPTION

The Subject Property consists of 0.77 acres of land located in the southwestern quadrant of the intersection of Blair Mill Road, East-West Highway and Newell Street, within the Silver Spring Central Business District. The property is zoned CBD-1 and lies within the Sligo Creek watershed, which is designated as Use Class I. There are no environmentally sensitive areas or significant trees located on the site.

The Application proposed to create a multi-family residential community using the optional method of development in the CBD-1 zone. The proposed housing will consist of up to 96 dwelling units, consisting of a mix of unit types and including a minimum of 12.5% (12 units) Moderately Priced Dwelling Units (MPDUs), along with below-grade structured parking. The proposed housing reflects density of 124 dwelling units per acre, consistent with the density permitted in the CBD-1 zone (maximum of 125 dwelling units per acre). The proposal includes 4,387 square feet of on-site public use space and amenities, totaling 24.7 percent of the net lot area. The minimum required public use space for this project is 20 percent of the net lot area, or 3,555 square feet. The project also includes an additional 4,235 square feet of off-site streetscape improvements.

III. BACKGROUND

A. Transportation

1. Site Location, Access, Circulation, and Parking

The Subject Property is a roughly triangular parcel located at the southwest corner of the intersection of East-West Highway, Blair Mill Road and Newell Street. The Property is bordered by Blair Mill Road on its northern boundary and by East-West Highway along its eastern boundary. Newell Road borders the Property to the south, and Acorn Park is located to the south and east along Newell Street.

2. Local Area Transportation Review ("LATR")

The proposed development of 96 residential units is not anticipated to generate more than 30 peak hour trips; therefore, the Applicant was not required to provide a formal traffic study per the LATR Guidelines. A traffic statement complying with LATR Guidelines was submitted and accepted for this Application.

3. Master Plan Roadways and Bikeways

East-West Highway is classified as a major highway with four travel lanes and an ultimate right-of-way width of 90 feet between Blair Mill Road and Georgia Avenue. Newell Street is classified as a primary residential street of ultimate right-of-way width of 70 feet per the Sector Plan. Blair Mill Road is classified as a Business Street of ultimate right-of-way width of 70 feet per the Silver Spring CBD Sector Plan.

Staff informed the Board that the Subject Property had previously dedicated its portion of the required right-of-way for Blair Mill Road. Staff further informed the Planning Board that it had granted a waiver to permit reduction of the Blair Mill Road right-of-way to 63 feet as part of the approval of the 1200 East-West Highway Project¹, located across from the Subject Property on the north side of Blair Mill Road. Staff advised the Board that it had recommended approval of the 1200 East-West Highway Project because three travel ways, a Class III (on-road) bikeway, and a 12-foot sidewalk along the frontage of Blair Mill Road will be established within the 63 feet; the Board found that these improvements met the requirements of the Sector Plan for total circulation needs.

An off-road, shared-use bikeway is planned for East-West Highway (Bikeway #5, also referred to as SP- 9) for the length of the development frontage. An on-road shared outside lane bicycle facility is planned for Blair Mill Road (Bikeway #14). Both bicycle facilities are shown in the Countywide Bikeways Functional Master Plan.

4. Right-of-Way Width Waiver

The Applicant requested a waiver of the required dedication for Newell Street pursuant to Section 50-38 of the Subdivision Regulations. The Subject Property forms a triangular parcel on the western side of the Newell Street/Blair Mill Road/East-West Highway intersection. Newell Street abuts the Subject Property along its southern boundary. To the southwest of the Subject Property, across Newell Street, is the previously approved development for Preliminary Plan #1-94057 (Caldor/Discovery Creative and Technical Center) ("Discovery Center"). The preliminary plan for the Discovery Center included a petition to abandon a section of Newell Street in order to

¹ Planning Board approval for Preliminary Plan #1-05084 granted June 30, 2005.

expand Acorn Park, which confronts the Subject Property across Newell Street. Staff informed the Board that the abandonment of a portion of Newell Street was incorporated into the Discovery Center Preliminary Plan approval, resulting in a reduced right-of-way of 42 feet at the time.² Additional dedication would have compromised the configuration of Acorn Park.

The instant Application proposes dedication of an additional 10 feet of right-of-way, for a total of 52 feet for the section of Newell Street bordering the Subject Property. Staff informed the Board that the prior abandonment and revised dimensions for the Newell Street right-of-way were not included in the Sector Plan but that the previous approval for the Discovery Center anticipated 10 feet of additional Newell Street right-of-way would be dedicated when the Subject Property came in for future development, resulting in a minimum of 33 feet of pavement within the right-of-way, plus sidewalks. Because the proposed right-of-way is less than the standard required in Subdivision Regulations Section 50-26, the Applicant requested a waiver of this section pursuant to Code Section 50-38.

Staff recommended that the Planning Board grant the requested waiver and require Applicant to dedicate 10 feet of additional right-of-way for Newell Street. Staff advised the Board that, shifting the right-of-way by attempting to expand beyond the 10 feet sought from the Subject Property would exacerbate the problems posed by the geometric configuration of the adjacent intersection. Therefore, Staff proposed that the Applicant dedicate 10 feet of right-of-way, preserving the non-standard roadway cross section for this segment of Newell Street and retaining the existing geometry of the adjacent intersection. In Staff's view, the additional 10 feet of right-of-way would adequately provide for standard streetscape amenities along the frontage of the Subject Property.

Staff recommended approval of the requested waiver, finding that the ten-foot dedication constituted the minimum necessary to provide relief from Section 50-38 of the Subdivision Regulations, that the waiver is not inconsistent with the purposes and objectives of the General Plan, and that the waiver is not adverse to the public interest. Staff further indicated that the resulting road cross-section will meet the pavement, sidewalk, and streetscape requirements of the Sector Plan.

5. Pedestrian Access

The adjacent intersection has signalized pedestrian crosswalks on all approaches, providing adequate access to and through the intersection for pedestrians. The proposed pedestrian facilities along the Property's frontage connect to a comprehensive

² Planning Board Opinion for Preliminary Plan #1-94057, Caldor/Discovery Creative and Technical Center, dated July 29, 1997.

network of safe and adequate pedestrian facilities in the CBD. No additional improvements for pedestrian access are anticipated as a result of this Application.

B. Environmental

The Subject Property contains no environmentally sensitive areas, forest, or significant individual trees. The Property is exempt from forest planting requirements because of its small size.

IV. PUBLIC HEARING TESTIMONY

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated September 29, 2005 ("Staff Report"). Staff testified at the public hearing, presenting its findings consistent with the Staff Report. Staff discussed the requested waiver of right-of-way width for Newell Street, recommending that the Board approve the waiver pursuant to Section 50-38 of the Subdivision Regulations. Staff advised the Board that the Application, as conditioned, complies with the Subdivision Regulations and recommended approval of the Preliminary Plan.

The Applicant appeared at the hearing represented by legal counsel. Applicant testified that it accepted the Staff recommendation and conditions regarding the Preliminary Plan.³

The Board questioned the Applicant regarding the impact of the Applicant's requested reduction of the number of provided parking spaces, from 46 to 44. Staff and the Applicant informed the Planning Board that the Subject Property is located within the Silver Spring Parking Lot District; and, therefore, the project is not required to provide any parking spaces, pursuant to the relevant provisions of Article 59-E of the Zoning Ordinance. Staff and the Applicant informed the Board that, subject to relevant provisions of the County Code, the Property is, however, subject to an ad valorem tax, regardless of whether 46 spaces or 44 spaces are proposed.

The Board questioned Applicant and Staff regarding an item in the Preliminary Plan Data Table and Checklist regarding submission of comments by Montgomery County Fire and Rescue Service ("DFRS"). The Board expressed concern that Staff had received no comments regarding the Preliminary Plan from DFRS within the 30-day review period. Staff informed the Board that DFRS had previously indicated that its practice was to submit comments within 30 days only when concerns existed regarding plans submitted; where no comments were submitted to Staff within the 30 day period, the Service intended to communicate acceptance of the Preliminary Plan. The Board expressed concern regarding this practice and recommended that Staff request a

³ Additional public hearing testimony relevant to the concurrently reviewed Project Plan is discussed in the separate Opinion for the Project Plan, which is incorporated herein by reference.

written statement from DFRS verifying its application review policy; and, further, that Staff seek confirmation from DFRS that the instant application conforms with all DFRS requirements. Staff testified that it would seek the requested written confirmation of the DFRS policy and obtain confirmation from DFRS that the Preliminary Plan meets the standards required by the Service.

No other speakers testified at the public hearing.

V. FINDINGS

Having given full consideration to the recommendations of its Staff, which the Board adopts; the recommendations of the applicable public agencies⁴; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds, based on uncontested evidence of record, that:

- a) The Preliminary Plan No. 120060060 (formerly 1-06006) substantially conforms to the Silver Spring CBD and Vicinity master plan.
 - i. General Conformance: The Silver Spring Central Business District ("CBD") and Vicinity Sector Plan ("Sector Plan"), approved by the County Council on February 1, 2000, outlines six themes that articulate the shared goals and vision for a revitalized Silver Spring. The Board finds that three of these themes--i.e., a residential downtown; a green downtown; and a pedestrian-friendly downtown—apply to the subject project. The Sector Plan does not specifically identify the Subject Property as a potential housing site. However, the Sector Plan does encourage high-density residential land use as an important component of the revitalization efforts. The Application proposes to employ the optional method of development, providing new opportunities for landscaped public open spaces, public art, streetscapes and amenities and improving the quality of the pedestrian environment. Additionally, the Application encourages the development of active urban streets by providing a main building entrance along Blair Mill Road.
 - ii. Sector Plan Street Rights-of-Way:
 1. Newell Street: The Sector Plan recommends a street right-of-way of 70 feet for Newell Street; however, as Staff advised the Planning Board, the existing right-of-way of 42 feet had been reduced from 60

⁴ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

feet through an abandonment approved by the Board as part of a separate development approval in the 1990's, which abandonment permitted the expansion of Acorn Park. Staff further advised the Board that the earlier, unrelated, development approval anticipated that when the Subject Property—which confronts Acorn Park to the North across Newell Street—came in for development, it would be required to dedicate an additional 10 feet of Newell Street right-of-way. Therefore, Staff recommended that the Applicant dedicate the additional 10 feet of street right-of-way to provide a final right-of-way width of 52 feet. As is mentioned above, the Planning Board granted a waiver of the minimum required right-of-way width on Newell Street as a part of the concurrently reviewed Preliminary Plan application. For the reasons discussed in its approval of the accompanying Preliminary Plan, the Planning Board finds that the Project Plan conforms to the Sector Plan with respect to the Newell Street right-of-way width.

2. Blair Mill Road: Blair Mill Road has an existing 63-foot street right-of-way and is symmetrical (street-centered). Staff advised the Board that the Subject Property had already dedicated its portion of the required right-of-way. Staff further noted that, although the Sector Plan recommends a street right-of-way width of 70 feet for Blair Mill Road, the right-of-way for Blair Mill Road was established at 63 feet during the Preliminary Plan Review of the 1200 East-West Highway project (No. 1-05084), which confronts the Property across Blair Mill Road. Therefore, the Board required no additional dedication of Blair Mill Road right-of-way by the Applicant in the concurrently reviewed Preliminary Plan. As such, the Board finds that the Project Plan conforms to the Sector Plan with respect to the Blair Mill Road right-of-way width.

The Board finds that the reduced right-of-way widths meet the circulation criteria and recommendations in the Sector Plan and provides the streetscape elements required by the Silver Spring Streetscape Plan.

- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
 1. The Board incorporates its findings immediately above, concerning right-of-way widths and expressly finds that the reduced widths will be adequate to support and service the area of the subdivision.
 2. Parking for the proposed residential units will occur on-site, within a below-grade 2-level parking garage. The parking requirement for the proposed residential use equals 123 spaces. Credits for residential uses in the CBD and for proximity to the metro station are being provided, with

the total parking requirement for all uses equaling 105 spaces. Only 44 parking spaces are being provided on the site; however, because the Property is located within the Silver Spring Parking Lot District ("PLD"), the Board finds that the Applicant is not required to provide 105 spaces on site. Under relevant provisions of Chapter 60 of the Montgomery County Code, the Applicant may satisfy its parking requirements by 1) providing all of the required off-site parking spaces; 2) providing no parking spaces and paying a parking tax for all of the required parking spaces; or 3) providing some of the required parking spaces and paying a tax for the number of required parking spaces it does not provide. Sites within the PLD are permitted to minimize the number of spaces provided onsite and take advantage of the County's facilities. The closest County parking facilities are Garage #58 (NOAA building), approximately 500 feet north of the site, and the Kennett Street Garage, approximately 300 feet to the south and east of the project. The Board finds, based on uncontested evidence of record that the existing public parking facilities adequate to support any parking resulting from this development that is not handled on site.

3. The proposed development of 96 residential units is not anticipated to generate more than 30 peak hour trips and therefore is not required to provide a formal traffic study per the LATR Guidelines. A traffic statement complying with LATR Guidelines was submitted and accepted for this project proposal. Additionally, the Applicant will enter into a Traffic Mitigation Agreement (TMA) with the Planning Board to help the Project achieve the non-driver commuting goal for development in the Silver Spring CBD.
- c) The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision.
 - d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
 - e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards, as memorialized in the MCDPS letter dated September 20, 2005.
 - f) The requested waiver of the Subdivision Regulations, pursuant to MONTGOMERY COUNTY CODE § 50-38, to permit 10 feet of dedication for

Newell Street is justified. The Board finds that unusual circumstances exist that prevent compliance with the requirement in § 50-26 for a minimum right-of-way width of 70 feet; and, furthermore, that the waiver is the minimum necessary to provide relief from the section, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest. Specifically, given the existing geometry of the Blair Mill Road/East-West Highway/Newell Street intersection, additional right-of-way from the south side of Newell Street would have been desirable; however, such right-of-way was not provided, as discussed above, because it would have compromised the configuration of Acorn Park. The Board concurs with Staff's view that shifting the right-of-way beyond the 10 feet sought from the Subject Property would cause the geometric configuration of the adjacent intersection to become problematic.

- g) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.
- h) Any future objection concerning a substantive issue that was not raised prior to the closing of the Record is waived.

IV. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 120060060 (formerly #1-06006) in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120060060 (formerly #1-06006), including a waiver of Section 50-26(a) pursuant to Section 50-38, to permit reduced-width road rights-of way for Newell Street along the property frontage; and subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 96 multi-family dwelling units, including 12.5% Moderately Priced Dwelling Units (MPDUs).
- 2) Applicant shall dedicate, and show on the record plat, ten feet of right-of-way on Newell Road so as to equal 52 feet of right-of-way when measured from the confronting property line.
- 3) Applicant shall participate in the Silver Spring Transportation Management District and enter into a Traffic Mitigation Agreement with M-NCPPC and MCDPWT prior to site plan signature set approval.
- 4) Final approval of the number of dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 5) Applicant shall provide a Class III (on-road) bikeway along the frontage of the property on Blair Mill Road.

- 6) Compliance with the conditions of approval of the project plan (Project Plan No. 920060010).
- 7) Compliance with the conditions of the MCDPS approval of the stormwater management plan dated September 20, 2005.
- 8) Compliance with conditions of MCDPWT letter dated September 29, 2005, as may be amended.
- 9) Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s).
- 10) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 11) Other necessary easements.

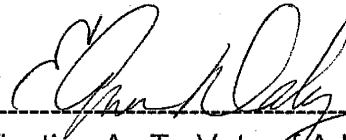
This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among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

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

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD ADOPTION OF OPINION

At its regular meeting, held on **Thursday, February 9, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 1-20060060, (formerly 1-06006), 1200 Blair Mill Road Condominiums**. Commissioners Perdue and Bryant abstained.



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