APR 5 2010



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

### MONTGOMERY COUNTY PLANNING BOARD

### RESOLUTION

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

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

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

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

Approved as to Legal Sufficiency:

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on March 4, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

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

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

### 1. Development Ceiling

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

#### 2. Building Height and Mass

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

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

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

### 4. Public Use Space and Amenities

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

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

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

- a. Design the on-site public use space to distinguish it spatially from the "front yard" of the multi-family building.
- b. Revise the site design as necessary to minimize the width of the parking garage entry driveway.
- c. Further refine the quality of the proposed building facades.
- d. Coordinate with Development Review, Urban Design, Fire and Rescue, DOT, and DPS Stormwater to address outstanding design issues satisfactorily.
- 6. Forest Conservation
  - a. The proposed development shall comply with the conditions of the preliminary Forest Conservation Plan as stated in the Environmental Planning approval letter to the Applicant. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services' issuance of sediment and erosion control permits.
  - b. Action on the requested tree removal variance shall be taken as part of the pending review of the Preliminary Plan of Subdivision.

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

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

## Intents and Purposes of The CBD Zones

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

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

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

(2) "To permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in central business districts to meet the needs and requirements of workers, shoppers and residents."

The hotel use central to this proposal will provide a much-needed economic engine for the southern end of Fenton Village, providing customers for surrounding purveyors of food, goods, and services. The additional upgraded office space, multi-family dwelling units, and retail uses will greatly expand the diversity of options for workers, shoppers, and residents, providing MPDUs, WFHUs, and smaller scale neighborhoodoriented retail. (3) "To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and the circulation system and between the central business district and adjacent areas."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Purpose of the Fenton Village Overlay Zone

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

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

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

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

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

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

#### DATA TABLE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board only if the project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than would be achieved without the proposed transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# CERTIFICATION

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

Royce Hanson, Chairman Montgomery County Planning Board

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