



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 12-59

Project Plan No. 920120020

Project Name: Fenton Street

Date of Hearing: May 31, 2012 and July 16, 2012

AUG 15 2012

RESOLUTION

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

WHEREAS, on February 6, 2012, Fenton Development, LLC ("Applicant"), filed an application for approval of a project plan for 18,650 square feet of retail, 215,660 square feet of residential development for a maximum of 259 dwelling units, including 12.5% MPDUs, and 29,228 square feet of institutional use for a religious institution ("Project"); and

WHEREAS, the property on which the Project is located is bounded on the east side by Fenton Street, the south side by Wayne Avenue and the north side by Bonifant Street, on 2.69 acres of land currently comprised of multiple lots and parts of lots, proposed to be subdivided into two lots at a future preliminary plan application ("Subject Property");

WHEREAS, the Subject Property is divided among four zones: CBD-1 (which is also within the Fenton Village Overlay zone), CBD-0.5, and R-60, and is subject to two master plans; i) the CBD-1/Fenton Village Overlay zoned land and the CBD-0.5 zoned land is covered by the 2000 Silver Spring Central Business District ("CBD") Sector Plan ("Sector Plan"), and ii) the R-60 zoned land is covered by the North & West Silver Spring Master Plan ("Master Plan")¹; and

WHEREAS, Applicant's project plan application was designated Project Plan No. 920120020, Fenton Street ("Application" or "Project Plan"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated May 17, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("May 17th Staff Report"); and

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department

Date 7/18/12

¹ The R-60 portion of the Subject Property was erroneously identified in the May 17th Staff Report as being located in the East Silver Spring Master Plan, which necessitated the second hearing on July 16, 2012.

WHEREAS, on May 31, 2012, the Planning Board held a public hearing on the Application, and at the hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, before a Resolution had been adopted memorializing the Board's action, Staff determined that the Board's finding that the Application conforms to the Master and Sector Plans was based on erroneous information provided in the May 17th Staff Report, as that portion of the Project in the R-60 zone was mistakenly identified as subject to the East Silver Spring Master Plan instead of the North & West Silver Spring Master Plan; and

WHEREAS, Staff issued a supplemental memorandum to the Planning Board dated July 16, 2012, setting forth its analysis and recommendation to reopen the record on this Application for the limited purpose of addressing Master Plan conformance of the Project located in the R-60 zone for the Board to make a finding of conformance with the North and West Silver Spring Master Plan (the May 17th Staff Report and the July 6, 2012 supplemental memorandum, together, the "Staff Report"); and

WHEREAS, on May 31, 2012, the Planning Board voted to approve the Application subject to conditions, on motion of Commissioner Anderson, seconded by Commissioner Dreyfuss, with a vote of 5-0: Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor; and

WHEREAS, on July 16, 2012, the Planning Board reopened the record of proceedings, voting 5-0 to reaffirm its previous findings (except as modified at that hearing), and approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES the Project Plan No. 920120020, Fenton Street, for 18,650 square feet of retail, 215,660 square feet of residential development for a maximum of 259 dwelling units, including 12.5% MPDUs, and 29,228 square feet of institutional use for a religious institution, subject to the following conditions:²

1. Development Ceiling

The development is limited to 263,538 square feet of gross floor area

a.	Residential	215,660	s.f.
b.	Institutional (religious institution)	29,228	s.f.
c.	Non-Residential	18,650	s.f.

² For the purpose 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.

2. Building Height and Mass

- a. The development is limited to the building footprints as delineated in the Project Plan drawings submitted to The M-NCPPC dated May 1, 2012, unless modified at site plan review, and to a maximum height of 75 feet at the corner of Wayne Avenue and 45 feet on Bonifant Street, as determined by the Department of Permitting Services (“DPS”) approved building height measurement point(s).
- b. The building height is limited to 35 feet for the church building, as measured from Wayne Avenue.
- c. The Applicant must develop a façade design on Bonifant Street that is compatible with the existing one-family neighborhood located directly to the south and east. The façade design will be reviewed by Staff and East Silver Spring Citizens Association during site plan review.

3. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified rating certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform Staff of the LEED certification level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to Staff a written report for public record purposes only from the Applicant’s LEED consultant analyzing the feasibility of achieving a LEED-Silver rating, to include an affidavit from a LEED-accredited professional identifying the minimum additional improvements required to achieve the LEED Silver rating, including their associated extra cost. Submission of this report constitutes compliance with this condition.

4. Transportation

- a. The Applicant must limit future new development on the site to 18,650 square-feet of retail and 259 multi-family residential units. The existing church and the day care center, to be reconstructed at a new location on the site as part of this Project Plan, must not exceed 29,228 square feet.
- b. The Applicant, at the time of subdivision, must dedicate and show on the final record plat the following rights-of-way along the Subject Property frontage consistent with the Sector Plan and as modified below:
 - 1) Wayne Avenue – minimum of 40 feet from the roadway right-of-way centerline,
 - 2) Fenton Street – minimum of 40 feet from the roadway right-of-way centerline, and

- 3) Bonifant Street – minimum of 30 feet from the roadway right-of-way centerline in-lieu-of the standard 40 feet recommended by the Master Plan.
 - c. The Applicant must set back the first floor of the proposed building to provide full corner truncation at the corner of Wayne Avenue and Fenton Street. The Applicant must execute a Public Improvement Easement Agreement over the truncation area with Montgomery County Department of Transportation (“DOT”) prior to the release of any building permit, to allow DOT to construct, modify, and maintain the sidewalk within the truncation area in the future.
 - d. The Applicant must enter into a Traffic Mitigation Agreement (“Agreement”) with the Planning Board and DOT to participate in the Silver Spring Transportation Management District. The Applicant must execute the Agreement prior to the release of any building permit for the development.
 - e. The Applicant, at the time of site plan, must consider design features along Fenton Street and Wayne Avenue to discourage mid-block pedestrian crossings along these streets.
5. Public Use Space
- a. The Applicant must provide a minimum of 22.8% of the net lot area for on-site public use space and a minimum of 18.5% of the net lot area for on and off-site public amenity space. The final design and details will be determined during site plan review.
 - b. The public use space must be easily and readily accessible to the general public and available for public enjoyment.
 - c. The Applicant must provide bio-retention areas and other features in general conformance with the illustrative landscape plan depicted in the Staff Report.
 - d. The Applicant must present the plaza designs and public artwork to the art review panel prior to submittal of the site plan.
6. Staging of Amenity Features
- a. The development will be completed in one phase. A detailed development program will be required prior to approval of the certified site plan.
 - b. The Applicant must complete the on-site public use space improvements in accordance with a development program to be developed at site plan.
 - c. The Applicant must install the landscaping no later than the next growing season after completion of the building and site work.
7. Maintenance and Event Management Organization
- Prior to issuance of use-and-occupancy permits, the Applicant will create and implement a maintenance plan for all on-site public use space unless an alternative arrangement is made with another public entity.

8. Environment

- a. The final forest conservation plan to be submitted with the site plan, must include details and extraordinary measures to be taken to protect tree #11 (as identified in the Natural Resource Inventory/Forest Stand Delineation #420120030 approved on September 15, 2011).
- b. At the time of site plan and final forest conservation plan, if the Applicant shows any tree removal, above ground branch or crown removal to tree #11, the Applicant must submit and obtain approval of a revised variance under Section 22A-12(b)(3) before those impacts occur. The Applicant cannot remove tree #11 without the permission of the joint owner of the tree. Staff may require mitigation for the impacts that are greater than shown on the preliminary forest conservation plan.

9. Coordination for Additional Approvals Required Prior to Preliminary Plan and Site Plan Approval

The Applicant must obtain written approval from DOT for the final design and extent of any and all streetscape improvements within the rights-of-way prior to approval of the preliminary plan.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920120020, Fenton Street, stamped received by The M-NCPPC on February 6, 2012, are required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having considered the recommendations and findings of its Staff as presented at the hearings and as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and having considered the entire record, all applicable elements of § 59-D-2.43, and the relevant provisions of Section 59-D-2.42, the Planning Board, with the conditions of approval, FINDS:

- (A) The development complies with all of the intents and requirements of the CBD-1, CBD-0.5, R-60 and Fenton Village Overlay zone as applied comprehensively to the Project, and to that portion of the Project within each zone.**

All of the considerations of Section 59-D-2.43, of the Montgomery County Zoning Ordinance have been addressed by the Planning Board in reaching its conclusions and recommendations. As the following findings demonstrate, as conditioned, the Project Plan adequately addresses each of these considerations.

Section 59-D-2.42 of the Zoning Ordinance establishes the findings that must be made by the Planning Board and in concert with the considerations enumerated above form the basis for the Board's approval. In accordance herewith, the

Planning Board makes the following findings:

Intent and Purposes of the CBD Zones

Section 59-C-6.212 of the Zoning Ordinance states the purposes that the CBD zones are designed to accomplish. The Project Plan conforms to these purposes as follows:

- (1) *“To encourage development in accordance with an adopted and approved master or sector plan ... by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan ... and the site plan... is approved on review by the Planning Board.”*

With respect to density, the Sector Plan recommends land uses that will provide incentives for more housing, office and small retail uses that will activate and revitalize the Fenton Village district. The Sector Plan recommends building heights that will accommodate the listed uses while ensuring compatibility with the surrounding neighborhoods. The approved uses, heights and massing of the Project Plan meet these goals by relocating the church to create a transition between the single family homes and the CBD, and proposing a significant amount of new residential above the ground floor retail uses.

- (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 Sector Plan indicates that small scale retail, Class B and Class C retail and housing are appropriate for the Subject Property. The Application will provide retail and residential uses that will be visible and accessible to a greater number of pedestrians. The general goals of the Sector Plan and the specific objectives of the area advocate optional method projects that provide employment and housing opportunities near both transit stations and other day-to-day necessities. The Application satisfies these goals by its proximity to transit and by providing a variety of uses on the Subject Property.

- (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 development will enhance pedestrian, cyclist, and vehicular circulation by limiting auto access to two points on site and limiting on-site parking. The layout of doors, sidewalks, elevators, and open space will direct pedestrians in and around the Subject Property to access this and adjacent buildings and streets.

The relationship of the new buildings to existing buildings is typical and appropriate for a CBD. Generally in the CBD, adjacent buildings with windows are required to be setback at least 15 feet from each other to minimize the impacts on available sunlight and existing views. This Project Plan meets that standard. Details of the building façades will be fine-tuned during the subsequent site plan review to ensure a desirable relationship with the adjoining uses.

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

The Subject Property is approximately 1/3 mile from the Silver Spring Metro and 100 feet from the nearest bus stop. It is also directly across the street from a future Purple Line station. It is a local and regional imperative that infill development is encouraged on sites as an alternative to suburban sprawl. As conditioned, the location and accessibility of the development to the local transit system is an excellent realization of the Sector Plan transit and sustainability goals.

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

Vehicular circulation is limited to one ingress and egress point on Bonifant Street for daily circulation. A loading space is also provided along Bonifant Street to reduce pedestrian conflicts along Wayne Avenue and Fenton Street.

The pedestrian environment provides numerous enhancements to help increase the walkability of the Fenton Village District, including an upgraded streetscape and an alternate pedestrian route through the Subject Property from Bonifant Street to Wayne Avenue.

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

The approved development will provide up to 259 residential units, of which 12.5% are Moderately Priced Dwelling Units.

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

The development, at preliminary plan will assemble 13 recorded and parts of lots into two new lots.

Further Intents of the CBD-1 & CBD-0.5 Zone

Section 59-C-6.213(a) of the Zoning Ordinance states further intents of the CBD-1 & 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*
- (2) *To provide a density and intensity of development which will be compatible with adjacent land uses outside the central business districts.*

This Application will provide land uses at a density and intensity that encourages small business enterprises and diverse housing by providing ground floor retail on Fenton, Wayne and Bonifant Streets, and providing up to 259 residential dwelling units and 12.5% moderately priced dwelling units. The project will step down the building heights as they approach the edge of the Silver Spring Central Business District and locate uses (Church) adjacent to the residential neighborhood that are compatible with residential uses and will act as a buffer between the Silver Spring CBD and the residential neighborhood.

Requirements of the CBD-1, CBD-0.5, Fenton Village Overlay District and R-60 Zone

The data table below lists the required development standards approved by the Planning Board and binding on the Applicant. Based on this data table and other evidence and testimony of record, the Applicant meets all of the applicable requirements of the optional method of development in the CBD-1 and CBD-0.5 zones, Fenton Village Overlay Zone and the R-60 zone as applied to that portion of the Project within each zone.

DATA TABLE

Development Standard	Permitted/ Required	Approved and Binding
Building Height (feet)		
CBD-Zone-59-C-18.192(b)(1)(E)	75	75
CBD-Zone-FVOZ	60	45
R-60	35	35
Setbacks (feet)		
CBD-1 & CBD-0.5		
Front (Wayne Ave)	n/a	0
Front (Fenton Street)	n/a	0
Front (Bonifant Street)	n/a	0
R-60		
Front (Wayne Ave)	25'	25'
Side: 8'or 10' (total of 18')	8'-10'	8'
Side: 8'or 10' (total of 18')	8'-10"	10'
Site Area (square feet)		
Net Tract Area	n/a	86,335
Dedications	n/a	27,989
Prior Dedications	n/a	3,088
Gross Tract Area	18,000	117,412
Density		
CBD-1: Floor Area Ratio	3.0	3.26
Allowable S.F.	189,885	206,050
CBD-0.5: Floor Area Ratio	1.5	1.13
Allowable S.F.	67,117	50,636
Total CBD Density:	257,002	256,686
R-60	N/A	6,852
Total Project Density	257,002	263,538
Combined FAR across CBD-1 and CBD-0.5 zones:	2.378	2.375
Residential Density 96.28 (du/ac.):	259	259
Public Use Space (% of net lot)		
On-Site Public Use Space	20	22.82
Off-Site Amenity Space	n/a	18.50
Total Public Use & Amenity Space	20	41.32
Parking		
Residential Parking	297	253
Retail Parking	66	0
Church Parking	128	14
Total Vehicle Spaces	494	267*

*Note: The Subject Property is located within the limits of the Parking Lot District ("PLD") and, therefore, is not required to satisfy the normal Zoning Ordinance requirement for such a development, of 494 parking spaces on site, but would be required to pay an ad valorem tax to the PLD for the number of deficient spaces.

According to the Zoning Ordinance, §59-C-6.215(b), another requirement of optional method projects is the provision of additional public amenities:

“Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted.”

To this end, the following package of amenities and public facilities is included with the Project:

Amenities and Facilities Summary

On-Site Public Use Space Improvements

- Two public plazas extended from Bonifant Street to Wayne Avenue
- Public Art
- Landscaping
- Seating
- Specialty paving

Off-Site Amenity Improvements

- Brick sidewalks
- Street Trees
- Pedestrian scale street lights
- Street furnishings
- Undergrounding of utilities along the Subject Property frontage

(B) The development conforms to the Sector Plan and the Master Plan.

Zoning and Land Use

The Subject Property is zoned CBD-1, CBD-0.5 and R-60. The CBD-1 zoned portion of the Subject Property is also covered by the Fenton Village Overlay Zone. The CBD zoned portion of the Subject Property falls within the Sector Plan boundaries. All the uses approved are allowed in these zones.

Sector Plan Conformance

The approved and adopted Sector Plan is organized around several goals all of which are satisfied by this Application:

- Transit Oriented Downtown
- Commercial Downtown
- Residential Downtown
- Civic Downtown
- Green Downtown
- Pedestrian-Friendly Downtown
- Creation of a circulation and development patterns that encourage walking, cycling, and the use of mass transit.

The Sector Plan recommends the Fenton Village Overlay Zone, which encourages redevelopment in Fenton Village by providing more flexibility in development standards and the range of permitted uses. At the same time, the overlay zone ensures that new development is compatible with nearby uses and that it incorporates critical design elements, such as streetscaping and useful public open spaces.

Specifically the Fenton Village Overlay Zone encourages a mix of housing and commercial uses by development incentives, allows small parcels to become usable development sites, limits building heights, ensures compatibility with adjacent residential neighborhoods, allows the transfer of public use space requirements to other sites in the same district, and improves the character of Georgia Avenue.

Master Plan Conformance

The intent of the Master Plan is to preserve the community character and stability of the existing residential neighborhoods adjacent to the CBD. The Master Plan states that "New development, infill development and special exception uses should be compatible with the existing residential character." pg. 21. This Application satisfies that goal by concentrating its greatest height and density closer to Downtown Silver Spring while reducing the height and density adjacent to the residential neighborhood of the Master Plan. The existing church will be relocated from the east side of the Subject Property to the R-60 portion, thereby supporting the R-60 residential use by providing a civic/institutional use allowed in the R-60 zone; a use typical of a residential neighborhood. Furthermore, the church, a civic use, is an appropriate way to organize the site to transition from the residential neighborhood to the CBD.

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

The location is optimal for the intensity of use and density at the edge of the CBD. The building massing and heights are compatible with adjacent and surrounding uses, especially with the one-family detached neighborhood to the south and east. The Application has been designed so as not to adversely affect adjacent buildings and uses. To this end, the architecture and open space have been designed to focus the highest density closer to downtown Silver Spring, stepping down in height and mass to the residential neighborhood. As conditioned, the Applicant must develop a façade design on Bonifant Street that is compatible with the existing one-family neighborhood located directly to the south and east.

- (D) As conditioned, the development 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, is subject to a traffic mitigation agreement that meets all the applicable requirements.**

The Application will not overburden public facilities, including the public parking garage on Wayne Avenue. The Application is satisfying a portion of their parking requirement on site with the remainder to be satisfied through payment of parking district taxes to support public parking facilities in the district. The Subject Property is in close proximity to the Silver Spring Metro and 100 feet from the nearest bus stop. It is also directly across the street from a future Purple Line station. Therefore, the public transportation facilities are in place to serve the Project. The church will have minimal impact since the peak hour operations for this use are on weekends. Further, requirements for public safety and fire will be minimally impacted due to the nature of the land use and will be approved by the respective agencies as part of preliminary plan approval. The Applicant must enter into a Traffic Mitigation Agreement with the Planning Board and DOT to participate in the Silver Spring Transportation Management District.

- (E) The development is 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 between 1.0 and 2.0 FAR or between 35 and 43 dwelling units per acre, respectively in the CBD-0.5 and CBD-1 Zones. The number of MPDUs being provided would

also be reduced significantly through the standard method of development. 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 at 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 property.

(F) The development will include moderately priced dwelling units in accordance with Chapter 25A of this Code.

The development will provide 12.5% MPDUs as required by Chapter 25A. A final agreement to build between the Applicant and the Department of Housing and Community Affairs will be conditioned with the 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, the project plan may be approved by the Planning Board based on the findings in Section 59-C-6.2351. *Special standards for optional method of development projects involving more than one lot:*

The development will combine density between approved lots 1 and 2. Although the density on lot 1 will be slightly higher than allowed by the zone, the total density for both lots will be less than the total density allowed.

(a) Lots must be adjacent to each other or separated only by a public street or right-of-way.

The proposed lots (Lot 1 and Lot 2) are directly adjacent to each other.

(b) The density of development for any lot smaller 22,000 square feet must be measured in accordance with the maximum density provisions of the standard method of development.

Each of the two proposed lots are greater than 22,000 square feet in total area.

(c) The density of development for the combined lots must not exceed the total density otherwise permitted on the separate lots.

The combined density of proposed Lots 1 and 2 does not exceed the total density otherwise permitted separately on Lots 1 and 2.

(d) If the project plan does not contain development density from a lot to which public use space is being transferred, no additional public use space is required from that lot.

The project plan does not contain development density from a lot to which public use space is being transferred.

(H) The development satisfies applicable requirements for forest conservation under Chapter 22A of the Montgomery County Code, and, if applicable the protection of environmentally sensitive features under the Environmental Guidelines.

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

A Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD #420120030") for the Subject Property was approved on September 15, 2011, and did not identify any environmental constraints and forest resources on and near the Subject Property. As a result, the Environmental Guidelines are not applicable.

A preliminary forest conservation plan was submitted with the Application. The preliminary forest conservation plan worksheet shows the total net tract area being 2.05 acres. The project site has a 0.40 acre planting requirement. The Applicant will satisfy the afforestation requirement through the onsite creation of tree canopy in the residential zone and fee-in-lieu for the CBD zone.

2. **Forest Conservation Variance**

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to five Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made the following findings necessary to grant the Variance:

- (i) Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The majority of the site is impervious and void of tree cover. The Variance is based on site layout and design necessary for a development within the central business district as recommended by the Master Plan. The Three of Protected Trees to be removed are located on the eastern edge of the Subject Property forming a cluster. Tree #11 (as identified on the NRI/FSD) is not shown to be removed. However, impacts to the tree are 38.2 percent. Extraordinary root protection measures will be required at the time of the final forest conservation plan. If the Applicant shows any tree removal, above ground branch or crown removal to tree #11, the Applicant must submit and obtain approval of a revised Variance before those impacts occur.

- (ii) The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The majority of the site is impervious and void of tree cover. The Variance is based on an efficient site layout and design necessary for a development as recommended by the Master Plan.

- (iii) The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The Variance is for the subject property and not as a result of land or building use on a neighboring property.

- (iv) Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Variance will not violate State water quality standards nor cause measurable degradation in water quality. In this case, the existing buildings and parking lots have no onsite stormwater management. The proposed redevelopment will include stormwater management which will result in improved water quality of runoff rather as well as improved stream channel protection.

There are three offsite trees greater than 30 inches DBH that will also be impacted. Measures will be taken to protect the offsite trees. In any event, further evaluation of the impacts to these offsite trees will be reviewed during the subsequent preliminary and site plan applications.

(I) The development satisfies applicable requirements for water quality resources protection under Chapter 19 of the Montgomery County Code.

The development is subject to the water quality resources protection requirements. The Applicant has submitted a Stormwater Concept Plan to the Montgomery County Department of Permitting Services for their review and approval. The concept consists of green roofs and bio-filtration planters. A Stormwater Concept Plan approved by the Montgomery County Department of Permitting Services will be a condition of approval for the preliminary plan.

(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 Subject Property is providing all public use space and amenities on-site.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is ~~AUG 15 2012~~ (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 Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Anderson, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion, with no Commissioner abstaining, at its regular meeting held on Thursday, July 16, 2012, in Silver Spring, Maryland.


Marye Wells-Harley, Vice Chair
Montgomery County Planning Board