



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

MAY 1 2013

MCPB No.13-23
Site Plan No. 820130010
Studio Plaza
Date of Hearing: February 21, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board”) is authorized to review site plan applications; and

WHEREAS, on September 11, 2012, Fairfield Investment Company LLC (“Applicant”) filed an application for approval of a site plan for one mixed-use multi-family apartment building with a total gross floor area of 418,069 sf., including 10,500 sf. of retail and up to 415 dwelling units, including 61 Moderately Priced Dwelling Units (MPDUs) (15% of non-Workforce Housing Units (WFHUs)) and 10 WFHUs in addition to 344 market rate units, on 3.8 acres of CBD-1 and Fenton Village Overlay zoned land, located on the block bound by Mayor Lane, Thayer Avenue, Fenton Street, and Silver Spring Avenue (“Subject Property”), in the Silver Spring CBD Policy Area, Silver Spring CBD Sector Plan (“Master Plan”) area; and

WHEREAS, Applicant’s site plan application was designated Site Plan No. 820130010, Studio Plaza (“Site Plan” or “Application”); 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 February 11, 2013, setting forth its analysis and recommendation for approval of the Application subject to certain conditions (“Staff Report”); and

WHEREAS, on February 21, 2013, 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, on February 21, 2013, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820130010 for one mixed-use multi-family apartment building with a total gross floor area of 418,069 sf., including 10,500 sf. of retail and up to 415 dwelling units,

Approved as to
Legal Sufficiency

6787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

including 61 MPDUs (15% of non-WFHUs) and 10 WFHUs in addition to 344 market rate units, on the Subject Property, subject to the following conditions:¹

1. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan 120130020. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DOT conditions, and DPS stormwater conditions.

2. Density

This Site Plan is limited to a maximum gross floor area of 418,069 sf., including 10,500 sf. of retail and up to 415 dwelling units. The total number of dwelling units includes 61 MPDUs and 10 WFHUs, in addition to 344 market rate units.

3. Moderately Priced Dwelling Units (MPDUs)

- a. The development must provide 15 percent of the total number of non-WFHUs as MPDUs on-site in accordance with Chapter 25A. The Applicant is receiving a 22 percent residential density bonus for providing 15 percent MPDUs on-site.
- b. The MPDU agreement to build shall be executed prior to the release of any building permits, except sheeting and shoring permits.

4. 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 M-NCPPC 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.

5. Maintenance of Public Amenities

The Applicant is responsible for maintaining all on-site publicly accessible amenities including, but not limited to, the public use space, the new private

¹ 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.

drive, public art, and associated landscaping and site furnishings, unless provided by contract with another party.

6. Site Design

- a. At the northeast corner of the building, the Applicant must provide a minimum of 5' clear passage between the outside face of the exterior columns adjacent to the retail portion of the building and the railing adjacent to the sidewalk of the new private drive, beginning at the corner of Thayer Avenue and the new private drive and ending at the stair into the public use space.
- b. The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheets A3.00, A3.01, and A3.02 of the submitted architectural drawings, as determined by Area 1 staff.
- c. For the adjacent GranDesign building, located at 912 Thayer Avenue:
 - i. The Applicant must place bollards or other buffering and protective measures (e.g., planters) along the north side of the public alley located on the south side of the GranDesign property to protect the building. The number, type, and location of these measures must be illustrated on the Certified Site Plan.
 - ii. Prior to initial occupancy of any Phase 1 improvements, the Applicant must enter into a written agreement with the owners of the GranDesign building to address:
 1. whether GranDesign's rear building entrance will remain in its current location on the west side of the building or will be relocated to the south side of the building;
 2. all interior and exterior improvements (e.g., stairs or a ramp) that must be made to the GranDesign building related to any relocation of the rear building entrance.
 - iii. The Applicant must note on the Certified Site Plan that the rear building entrance options and design will be determined by agreement between the Applicant and GranDesign prior to initial occupancy permit of any Phase I improvements, and that either option may be incorporated without amending the site plan.
 - iv. All other details relating to the selection and implementation of these alternatives solutions will be by private agreement.

7. Public Use and Amenities

- a. Provide a minimum of 35,100 sf. of on-site public use space, as illustrated on the Certified Site Plan.
- b. Exclusive of the public use space required in Condition 7.a. above, provide a minimum of 23,750 sf. of on-site and off-site public amenity space, as illustrated on the Certified Site Plan.

- c. The Applicant must provide the Silver Spring streetscape standard improvements along the site frontage.
- d. Provide and install the Silver Spring streetscape pavers (not including street lights, street trees, or undergrounding of utilities) within the right-of-way on the north side of Silver Spring Avenue between the western site boundary and the existing streetscape improvements near Georgia Avenue. The Applicant must make good faith efforts to obtain permission from the property owner along this frontage to install streetscape pavers on the private property between the right-of-way and the existing building face.
- e. Except as noted, all streetscape improvements must conform to the Silver Spring Streetscape guidelines, as amended, and include undergrounding of utilities.
- f. Replace a maximum of 4 ornamental trees in the public use space with 2 canopy trees. Final location and species to be approved by M-NCPPC Area 1 staff at Certified Site Plan.
- g. If at a future time the definition of "Public Use Space" in the Zoning Ordinance is changed, this project will be subject to and comply with all requirements of the new definition.

8. Private Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for residential development.
- b. All onsite down- light fixtures must be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d. The height of the light poles shall not exceed the height shown on the Certified Site Plan, including the mounting base.

9. Public Art

- a. Provide for and install the public art concept designed and produced by artist Dan Steinhilber, as presented to the Planning Department's Art Review Panel on December 12, 2012, and illustrated in the Certified Site Plan.
- b. Any significant changes to the concept presented on December 12, 2012, must be presented to the Art Review Panel and approved by Area 1 staff before Certified Site Plan.
- c. Significant changes to the concept, as determined by Area 1 staff, proposed after Certified Site Plan, will require a Site Plan Amendment.

10. Noise

The Applicant must attenuate for all indoor noise levels that exceed 45 dBA Ldn.

11. Surety

Prior to issuance of first building permit (exclusive of sheeting and shoring) within each relevant phase of development, Applicant must provide a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. Applicant must provide a cost estimate of the materials and facilities, which, upon staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety shall include plant material, on-site lighting, recreational facilities, site furniture, and entrance piers within the relevant phase of development.
- c. Prior to issuance of the first building permit, Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. Surety shall be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

12. Development Program

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

- a. Street lamps and sidewalks must be installed prior to the issuance of the 300th residential use and occupancy permit. Street tree planting may wait until the next growing season.
- b. On-site and off-site amenities including, but not limited to, the public use space, Mayor's Promenade, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of the 300th residential use and occupancy permit.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

13. Certified Site Plan

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

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- c. Modify data table to reflect development standards enumerated in the Planning Board Opinion.
- d. Ensure consistency off all details and layout between site plan and landscape plan.
- e. The recreation calculations for this phase of development.
- f. Illustrate pedestrian safety measures to be included in Mayor Lane.
- g. Remove references to "Private Street."

BE IT FURTHER RESOLVED, that all site development elements as shown on Studio Plaza drawings stamped by the M-NCPPC on December 13, 2012, shall be 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 hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The site plan is consistent with the approved project plan. It retains the overall position of buildings, the new private drive, and the central green and pedestrian promenade. The gross floor area of the development is within the maximum established by the project plan. The project plan included conditions addressing accommodation of adjacent properties. This site plan meets the conditions for the property adjacent to this phase 1 site plan area, 911 Silver Spring Avenue. The Project Plan conditions for the Kalivas and Gerecht properties, which are not immediately adjacent to the phase 1 development, will be addressed during the future site plan for phase 2.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The uses are allowed in the CBD-1 Zone, as modified by the Fenton Village Overlay Zone (FVOZ) and the site plan fulfills the purposes of the zone by providing higher-density mixed-use zoning near transit.

Requirements of the CBD-1 & Fenton Village Overlay Zones

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the CBD-1 and Fenton Village Overlay Zones.

Data Table

| Development Standard | Permitted/ Required | Approved for entire Project, per Project Plan 920070010 | Preliminary Plan 120130020 | Phase 1, Site Plan 820130010 | Remaining for future site plans |
|-------------------------------------|----------------------------|----------------------------------------------------------------|-----------------------------------|-------------------------------------|----------------------------------------|
| Min. Site Area (square feet) | | | | | |
| Gross Tract Area | 18,000 | 222,592 | 222,592 | 165,809 | 56,783 |
| Prior Dedication | n/a | 41,971 | 42,021 | 25,072 | n/a |
| Proposed Dedication | n/a | 8,283 | 8,423 | 5,100 | |
| Net Lot Area | n/a | 172,338 | 172,148 | 135,637 | |

| Max. Density | | | | | |
|-----------------------------------------------------------------|---------|---------|---------|---------|---------|
| Base density (square feet) | 667,776 | 626,781 | 626,781 | 334,573 | 292,208 |
| Base FAR | 3 | 2.82 | 2.82 | 1.50 | 1.31 |
| Non-residential density (square feet) | n/a | n/a | n/a | 10,500 | n/a |
| Base residential density (square feet) | | | | 334,073 | |
| Bonus residential density for providing 15% MPDUs (square feet) | | | | 73,496 | |
| Total density, (square feet) | | | | 418,069 | |
| Total FAR | | | | 1.87 | |
| Dwelling units, total | | | | | |
| Dwelling units, total | n/a | n/a | 749 | 415 | 334 |
| Dwelling units, @ 15% MPDU | | | n/a | 61 | n/a |
| Dwelling units, WFHU* | | | n/a | 10 | |
| MPDU, min. % of non-WFHU | | | | | |
| MPDU, min. % of non-WFHU | 12.5 | 15 | 15 | 15 | n/a |
| Max. Net New Traffic Generation (trips) | | | | | |
| Morning Peak-Hour | n/a | n/a | 297 | 119 | 178 |
| Evening Peak | | | 351 | 135 | 216 |
| Max. Building Height (feet) | | | | | |
| Building, if project min. 33 % residential | 90 | 90 | n/a | 110 | n/a |
| - to accommodate WFHU | 110 | 110 | | | |
| Min. Setbacks (feet) | | | | | |
| East Property Line | n/a | 0 | n/a | 0 | n/a |
| North Property Line | | 0 | | 0 | |
| West Property Line | | 0 | | 0 | |
| South Property Line | | 0 | | 0 | |

| Public Use Space, Min. | | | | | |
|------------------------------------------------------|--------|--------|-----|--------|--------|
| On-Site Public Use Space (% of Net Lot Area) | 20 | 23.2 | n/a | 20.4 | 2.8 |
| On-Site Public Use Space (square feet) | 34,429 | 39,938 | | 35,100 | 4,838 |
| Off-Site Amenity Space (% of Net Lot Area) | n/a | 22.6 | | 13.8 | 8.8 |
| Off-Site Amenity Space (square feet) | | 38,905 | | 23,750 | 15,155 |
| Total Public Use & Amenity Space (% of Net Lot Area) | 20 | 45.8 | | 34.2 | 11.6 |
| Total Public Use & Amenity Space (square feet) | n/a | 78,843 | | 58,850 | 19,993 |

* based on the number of units attributable to County land

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

The building and structures of the development are located directly along the public streets, which is appropriate for the character envisioned by the Sector Plan. This location provides easy access to the building from adjoining sidewalks, open spaces, and parking. The location of the building and structures are adequate and efficient, while addressing the aesthetic concerns of the area, and do not pose any safety concerns on the site.

The project provides a 12,415 sf. landscaped central green, enclosed on three sides by the building and bound by the new private drive on the fourth. Through this green runs a paved pedestrian pathway, "Mayor's Promenade", which connects Georgia Avenue to Fenton Street. The space is located centrally to the block, with access to adjacent streets via a new sidewalk and terraced plaza. The location of the open space is adequate for the surrounding community, has been designed to encourage pedestrian activity and visual surveillance to promote safety, and presents an efficient balance between private development and public space.

Streetscape improvements, including trees, lighting, and underground utilities are provided along the new and existing adjacent streets to enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety but not

so much as to cause glare on the adjacent roads or properties. Recreation facilities, both on-site and in the vicinity, include open space, seating, and pedestrian paths. The landscaping, site details, and recreation facilities adequately and efficiently address the needs of the use and the recommendations of the Sector Plan, while providing a safe and comfortable environment.

Pedestrian access from adjacent sidewalks adequately and efficiently integrates this site into the surrounding area. Safety is enhanced by several improvements, including new and upgraded sidewalks and ground-floor building design that features regular entrances and windows. The vehicular circulation design efficiently directs traffic into and through the site with minimal impacts to pedestrian circulation. As designed, the paved area for both pedestrians and vehicles reduces imperviousness on site from the existing conditions. This balance of design with the site, the recommendations of the Master Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

The site is located in a transition area between Georgia Avenue, Fenton Village, and the East Silver Spring neighborhood beyond. Current development in this section of the CBD consists primarily of 25-30'-tall buildings. Site Plans approved by the Planning Board for buildings near Fenton Street and along Thayer Avenue provide additional residential and ancillary retail uses, and range in height from 60 to 90 feet. The *Silver Spring CBD Sector Plan* envisioned higher density development in this area, and changed the zoning to encourage additional height and density. The structure is compatible with the planned future development of this area.

The massing of the is mitigated through building stepbacks, primarily at the entrances from Thayer and Silver Spring Avenues, and the use of materials and will be further mitigated by future development on this site and surrounding sites, which will be of a comparable scale. Future phases of the project will include building heights that conform to the maximum allowed under the Fenton Village Overlay Zone, with a maximum height along Fenton Street of 65 feet and up to 110' closer to Georgia Avenue.

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

The development complies with the applicable requirements of the Forest Conservation Law. The Applicant will meet the total afforestation requirements through a fee-in-lieu payment.

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept on January 21, 2009. The stormwater management concept consists of a waiver of on-site channel protection measures due to existing shallow storm drain inverts. On-site water quality control will be met via green roof, flow based filters, and a hydrodynamic separator.

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

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

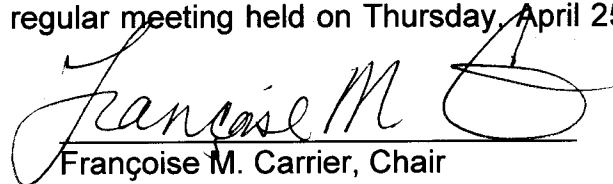
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 1 2013 (which is the date that this resolution is mailed to all parties of record); and

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).

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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 Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, April 25, 2013, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board