



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

APR 8 2013

MCPB No. 13-25  
Preliminary Plan No. 120120130  
8415 Fenton Street  
Date of Hearing: February 28, 2013

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on October 23, 2012 Fenton Development, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create two lots on 2.69 acres of land in the CDB-1, CBD-0.5, R-60, and Fenton Street Overlay zones, located at the intersection Wayne Avenue and Fenton Street. ("Subject Property"), partly in the 2000 Silver Spring CBD Sector Plan area and partly in the 2000 North Silver Spring and West Silver Spring Master Plan area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120130, 8415 Fenton Street ("Preliminary 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 15, 2013 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 28, 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, at the Hearing, the Planning Board voted to approve the Application subject to certain conditions, by motion of Commissioner Anderson and seconded by Commissioner Presley, by a vote of 5-0;

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120130 to create two lots on the Subject Property, subject to

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Approved as to  
Legal Sufficiency

  
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the following conditions:<sup>1</sup>

1. Total development is limited to two lots for a maximum of 259 residential dwelling units, 18,650 square feet of commercial uses, and 29,228 square feet of institutional use (church). A minimum of 12.5% of the total number of dwelling units must be Moderately Priced Dwelling Units.
2. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan (820130050) approved as part of this Preliminary Plan, subject to: Board approval of the Applicant's request for a variance from Forest Conservation Law to remove three specimen trees, with impacts to one offsite specimen tree and its potential removal should the tree not survive impacts. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.
3. The Certified Final Forest Conservation Plan must include the following:
  - a) The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to issuance of a Sediment Control Permit from the Department of Permitting Services. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
  - b) A fee-in-lieu that satisfies the 0.40 acre afforestation requirement must be submitted by the Applicant and approved by M-NCPPC staff prior to any clearing, grading or construction activity within the project area.
  - c) The Final Forest Conservation plan must be signed by the plan preparer and the Applicant must provide and sign the developer's certificate.
4. The Applicant must provide analysis and attenuate for any noise levels exceeding those recommended by the Planning Board's Noise Guidelines for interior levels.
5. The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the Limits of Disturbances (LODs) and the associated tree preservation measures.
6. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.
7. The Applicant must dedicate and show on the final record plat the following rights-of-way along the property frontage consistent with the 2000 Approved and Adopted Silver Spring CBD Sector Plan and as modified below:

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<sup>1</sup> 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.

- a) Wayne Avenue – minimum of 40 feet from the roadway right-of-way centerline,
  - b) Fenton Street – minimum of 40 feet from the roadway right-of-way centerline,  
and
  - c) 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.
8. The Applicant must execute a Public Improvement Easement Agreement over the area that would have been required for standard truncation at the corner of Wayne Avenue and Fenton Street with Montgomery County Department of Transportation (DOT) prior to the release of any building permit for the proposed development, to allow DOT to construct, modify, and maintain the sidewalk within the truncation area in the future.
  9. The Applicant must dedicate all road rights-of-way to the full width mandated by the Silver Spring CBD Sector Plan with the exception of Bonifant Street per #5 above.
  10. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a minimum 15 foot wide sidewalk along the property frontage on Wayne Avenue, Fenton Street and Bonifant Street, unless construction is waived by MCDPS.
  11. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated July 10, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  12. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 16, 2013, except item no. 3, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
  13. The Applicant must enter into a Traffic Mitigation Agreement (“TMAg”) with the Planning Board and DOT to participate in the Silver Spring Transportation Management District (TMD) and must execute the TMAg prior to the release of any residential building permit for development on the site. The TMAg must include those trip mitigation measures recommended by MCDOT, except as modified herein.

14. Prior to recordation of any plat, the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
15. Prior to recordation of any plat, Site Plan No. 8201300050 must be certified by M-NCPPC Staff.
16. The record plat must show necessary easements.
17. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
18. No clearing, grading or recording of plats prior to certified site plan approval.
19. The certified Preliminary Plan must contain the following note:

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

20. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
21. The subject property is within the Northwood High School cluster area, which is currently operating between 105-120% of capacity at the high school level, and a school facilities payment is required.
22. As applicable, the Applicant must make a School Facilities Payment to MCDPS at the high school level at low-rise w/structured parking unit rates for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

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 Preliminary Plan substantially conforms to the Master Plan, except with respect to one recommendation that is no longer appropriate.*

The preliminary plan has been reviewed for compliance with the Montgomery County Code, Chapter 50. The proposed subdivision substantially conforms to the recommendations adopted in the Master Plan. The proposed lot was reviewed for compliance with the dimensional requirements for the CBD-0.5, CBD-1 and R-60 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in these zones. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

The Preliminary Plan is consistent with the February 2000, Approved and Adopted Silver Spring CBD Sector Plan and the August 2000 North and West Silver Spring Master Plan. The Silver Spring CBD Sector Plan provides for the development of Downtown Silver Spring under the following themes: Transit-Oriented, Commercial, Residential, Civic, Green and Pedestrian Friendly. The Fenton Street project is in line with these themes as it provides for mixed-use development (commercial and residential) with significant public amenities in close proximity to the future Purple Line station across the street. It furthers the Plan's goals of creating a mix of housing choices supported by parks, retail, civic uses and employment opportunities adjacent to transit and with convenient access to the greater region.

The North and West Silver Spring Master Plan recommends reconfirming the existing residential zoning in North Silver Spring and recommends that new development, infill development, and special exception uses be compatible with the existing residential character, essentially maintaining the existing land use patterns (page 21). The proposed church use is compatible with the R-60 zone. The R-60 zone permits the institutional use (church)) and is appropriate as a transition to a residential neighborhood. The project maintains compatibility with the existing land use patterns by locating the church, which is compatible with one-family residential neighborhoods, on the east side of the project. The proposed church will act to buffer the neighborhood from the commercial uses located on the western side of the site in the Silver Spring CBD. The belfry or steeple, with an approximate height of 70', is located in the CBD-0.5 zone of the Silver Spring CBD Sector Plan area, thereby keeping taller structures closer to the taller buildings of Downtown Silver Spring.

The Silver Spring CBD Master Plan recommends an 80-foot right-of-way for Fenton Street along the frontage of the Subject Property, which would normally require the Applicant to dedicate 40 feet of right-of-way from the centerline. The Applicant proposed to dedicate 30 feet. Given the urban design objectives of this area, which include promoting pedestrian activity, and given further that a narrower right-of-way will

encourage cars to drive more slowly, the Planning Board finds that the full right-of-way recommended in the Master Plan is no longer appropriate.

*2. Public facilities will be adequate to support and service the area of the approved subdivision.*

Public facilities are adequate to accommodate the Application. Vehicular and pedestrian access will be safe and adequate with the proposed improvements. Sidewalks will be reconstructed along Wayne Avenue, Fenton Street and Bonifant Street to facilitate pedestrian mobility.

Although TPAR went into effect on January 1, 2013, the Application was eligible to be reviewed under PAMR because it was filed when PAMR was in effect. The Application satisfies the LATR and PAMR requirements. No mitigation or payment is required under PAMR. Had the Application been reviewed under TPAR, no payment would have been required either. A summary of the capacity/critical lane volume (CLV) analysis for the weekday morning and evening peak hours is presented in the Staff Report.

To satisfy the PAMR requirements of the APF test, and per the policy in place that offers a PAMR trip credit for CBD developments, a development located within the Silver Spring CBD Policy Area is required to mitigate 5 percent of "new" peak-hour trips generated by the development using Countywide trip generation rates, and is then offered a credit on the PAMR trip mitigation requirement equivalent to any reduction in peak-hour trips achieved by the development as a result of its location within the CBD. Based on the analysis in the Staff Report, the subject application satisfies the PAMR requirements of the APF test without any mitigation.

Public facilities and services are available and will be adequate to serve the proposed development. The property is proposed to be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that consideration of a depressed curb along Wayne Avenue in front of the public plaza and a load bearing access area on the public sidewalk might be appropriate to satisfy safety concerns. Final details to be approved at time of building permit. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the property.

The subject property is within the Northwood High School cluster area, which is currently operating between 105-120% of capacity at the high school level. If applicable, the Applicant must make a School Facilities Payment to MCDPS at the high school level at high-rise; w/structured parking unit rates for all units for which a building permit is issued. The timing and amount of the payment will be in accordance with

Chapter 52 of the Montgomery County Code.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The Application meets all applicable sections of the Montgomery County Code, Chapter, of the Subdivision Regulations. The proposed lot size, width shape and orientation are appropriate for the location of the subdivision, because it accommodates a multifamily residential building and institutional building of appropriate scale in the CBD-1 and CBD-0.5 zones.

The Preliminary Plan does not show standard truncation at the intersection of Wayne Avenue and Fenton Street. Pursuant to Section 50-26(c) 3) of the Subdivision Regulations, the corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property lines' intersection in each quadrant. The Planning Board, however, may specify a greater or lesser truncation than would otherwise be required.

The Applicant requested permission that the corner of the lot at Wayne Avenue and Fenton Street not be truncated, but have a Public Improvement Easement instead. The justification for this request is that the sight distance will be adequate as it will allow the Applicant to cantilever the upper floors over the easement area without obstructing sight views between Wayne Avenue and Fenton Street. Therefore, safety and compatibility will not be compromised. The Board heard testimony that standard truncation is not necessary for the construction of the Purple Line, which will run through this intersection.

The traffic channelization of the area will not be affected by the non-standard truncation. By providing a Public Improvement Easement instead of the standard truncation at the intersection, the Applicant can provide the desired sight distances.

The lot was reviewed for compliance with the dimensional requirements for the CBD-1 zone, CBD-0.5, R-60, and Fenton Village Overlay zones. The Application will meet tall the dimensional requirements for area, frontage, width and setbacks in these zones.

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

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

A Final Forest Conservation Plan (820130050) was submitted on October 23, 2012. The total net tract area is 2.7 acres with an afforestation requirement of 0.40 acres to be met as a fee-in-lieu payment.

#### B. Forest Conservation Variance

The property has no forest, streams or wetlands, and three specimen trees will be removed. One offsite specimen tree may be removed if impacts to the CRZ cause mortality. There will be lesser impacts to the critical root zones of two additional off-site specimen trees.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. The Board made the following findings necessary to grant the Variance:

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

The property is located predominantly within the CBD of Silver Spring under the Optional Method of development. The Project Plan was approved on July 16th, 2012 which maximizes density and use of the site as recommended in the Silver Spring Master Plan.

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

The requested variance is based on the need to maximize development within the CBD zones. The proposed plan would not be feasible if the square footage of the lot were restricted to save the existing trees.

3. *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 requested variance is a result of the proposal which promotes an efficient site design and layout for the subject property and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*



There will be a few small planting beds onsite that will provide both vegetation and amended soil volumes. The vegetation will aid in cooling surface temperatures within the immediate area, aid in carbon sequestration, and provide pollination opportunities. The proposed bio-retention facilities will improve runoff quality and quantity by filtering, cooling, utilizing, and slowly releasing stormwater into the storm drain network.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Chapter 19, article II, title "stormwater management", Section 19-20 through 19-35.*

The MCDPS Stormwater Management Section conditionally approved the Stormwater Management Concept for the Application July 10, 2012. 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 roots, and bio-filtration systems.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; 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 APR 8 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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, March 21, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board