



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

OCT 15 2013

MCPB No. 13-131
Project Plan No. 920130060
United Therapeutics Silver Spring Campus-Phase 3
Date of Hearing: September 12, 2013

RESOLUTION

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

WHEREAS, on May 22, 2013, United Therapeutics Corporation ("Applicant"), filed an application for approval of a project plan for 121,724 gross square feet of development including 10,000 square feet of retail and 111,724 square feet of office on 1.79 acres of CBD-1 zoned-land, located in the southeast quadrant at the intersection with Spring Street and Colesville Road ("Subject Property"), in the Silver Spring CBD Policy Area, Silver Spring CBD Sector Plan ("Sector Plan") area; and

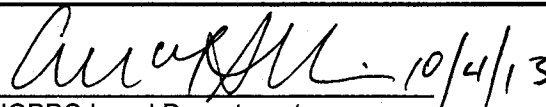
WHEREAS, Applicant's project plan application was designated Project Plan No. 920130060, United Therapeutics Silver Spring Campus-Phase 3 ("Application" or "Project Plan"); and

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 August 30, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 12, 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 September 12, 2013, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:

 10/4/13

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board APPROVES Project Plan No. 920130060 for 111,724 square feet of office use/laboratory space and 10,000 square feet of retail on the Subject Property, subject to the following conditions:¹

1. **Development Ceiling**
The development is limited to 121,724 square feet; 111,724 square feet of office use/laboratory space and 10,000 square feet of retail.
2. **Building Height and Mass**
The development is limited to the building footprint as delineated in the Project Plan drawings submitted to the M-NCPPC dated August 5, 2013, unless modified at site plan review, and to 90 feet in height as measured from the datum point along Spring Street as shown on Project Plan drawings.
3. **Architecture**
The exterior architectural character, proportion, material, and articulation must be substantially similar to the schematic elevations submitted to MNCPPC unless modified during site plan review.
4. **LEED Certification**
The Applicant must achieve a LEED Certified rating certification at a minimum, or energy and environmental design standards that the Department of Permitting Services identifies as equivalent to a certified-level rating in the appropriate LEED rating system. The Applicant must make good faith efforts to achieve a LEED Silver rating, or energy and environmental design standards that the Department of Permitting Services identifies as equivalent to a silver-level rating in the appropriate LEED rating system. Before issuance of the final use and occupancy certificate, the Applicant must inform MNCPPC Staff of the LEED Certification Level that they are applying for. 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 the 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

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.

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. Public Use Space, Facilities & Amenities
 - a. The Applicant must provide a minimum of 10,670 square feet for on-site public use space (15.8 percent of net lot area) as shown on the Project Plan.
 - b. The Applicant must provide a minimum of 12,900 square feet of off-site amenities (19.1percent of net lot area) as shown on the Project Plan.
 - c. To address the shortfall in the amount of on-site public use space (about 4.2%), the Applicant will make a contribution of \$314,736 to the Amenity Fund towards Gene Lynch Urban Park – scheduled for construction upon completion of the Silver Spring Transit Center – or other future amenity as determined by the Planning Board, per the requirements of 59-D-2.31.
6. Forest Conservation
 - a. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits, as applicable.
 - b. Approval of a Final Forest Conservation Plan must be secured, consistent with the approved Preliminary Forest Conservation Plan and associated conditions, prior to any clearing, grading or demolition on the site.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 920130060, United Therapeutics Silver Spring Campus stamped received by M-NCPPC on August 5, 2013, 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 hearing 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 Section 59-D-2.42, and the relevant provisions of Section 59-D-2.43, the Planning Board FINDS, with the conditions of approval, that:

- (a) *The development complies with all of the intents and requirements of the CBD-1 zone.*

Intents and Purposes of the CBD Zones

The Montgomery County Zoning Ordinance, Section 59-C-6.212, 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 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."

The Project Plan conforms to the general recommendations of the Silver Spring CBD Sector Plan with respect to land use and employment, Sector Plan themes, zoning and density and transportation.

(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 Project Plan replaces an aging parking garage with office/laboratory and retail space, uses recommended in the Sector Plan for the Silver Spring CBD. The mix of office/laboratory and retail is currently proposed as follows: 111,724 square feet of office/laboratory use and 10,000 square feet of retail use. The commercial uses compliment the surrounding residential and commercial uses at the northern edge of the CBD and provide opportunities for workers, shoppers and residents to promote a sustainable downtown environment.

(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 existing buildings surrounding the Subject Property are comprised of a mix of multi-family residential, office and retail uses, with varying heights and densities. The Project Plan responds to its location as a gateway to the CBD by employing a contemporary design style that is attractive and striking. The public

spaces that frame the ground plane of the building create an inviting visual and activating environment. The height of the building at 90 feet is comparable to the adjacent uses and serves as a transition to the neighborhoods to the north. The improved streetscape associated with the Project Plan will complete a portion of Spring Street and upgrade Colesville Road to provide greater opportunities for pedestrians and connections to the surrounding businesses and the metro station.

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

The Project Plan will provide new office space within a 10 minute walk from the Silver Spring Metro Station. Additionally, several bus lines operate in the vicinity of the Subject Property, including a stop directly in front of it on Colesville Road. The Subject Property is also within walking distance to the Spring – Cameron Garage, which provides 1,344 public parking spaces. Given the proximity to multiple transit options, it is reasonable to conclude that a considerable number of employees and patrons will utilize public transit resources.

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

Because the existing curb cut on Spring Street will be preserved, no additional curb cuts will be added. Pedestrian circulation will be enhanced with improved streetscape elements.

A significant component of the Project Plan is the improvement of sidewalks adjacent to the Subject Property. As previously described, the streetscape along Spring Street and Colesville Road will be detailed per the Silver Spring streetscape standards.

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

The Project Plan does not provide residential uses, but does provide employment and retail options for residents in the adjacent multi-family buildings.

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

As part of Preliminary Plan No. 120130190, the Applicant will consolidate parcels L-1963, L-2407, L2424, L-2446, into one new platted lot with a net lot area of 67,583 square feet after right-of-way dedication for Spring Street and Colesville Road. The Application incorporates multiple parcels to promote greater density in the CBD, which also allows for a stronger site designs and a greater opportunity for activated public use spaces and amenities.

Further Intent of the CBD-1 zone

Section 59-C-6.213(a) of the Zoning Ordinance states further intents of the CBD-1 zone:

- (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.*

As previously stated, the Project Plan is designed in a manner that is compatible with the surrounding multi-family buildings and adjacent office buildings. The Project Plan will also provide a mix of office and retail, increasing the daily number of people who will work and shop in the Silver Spring Central Business District.

Requirements of the CBD-1 Zone

The Project Plan complies with the development standards under the optional method of development. Among other standards, the Project Plan meets the area, public use space, building height, and density requirements of the zone. According to the Zoning Ordinance (59-C-6.215(b)) a further 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 Project Plan is providing the following package of amenities and public facilities:

- A net-zero building
- Streetscape improvements along Spring Street and Colesville Road consistent with the Silver Spring streetscape standards;
- Onsite plaza with seating, special paving and landscape areas;
- Public artwork;
- Amenity fund contribution

Requirements of the CBD-1 zone

The data table below lists the required development standards approved by the Planning Board and binding on the Applicant. The Planning 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 optional method of development in the CBD-1 zone.

DATA TABLE

Project Data Table for the CBD-1 Zone

Development Standard	Permitted/ Required	Approved and Binding on the Applicant
Building Height (feet)	90	90
Setbacks (feet)		
North Property Line (Spring Street)	0	0'
East Property Line (Colesville Road)	0	16'
South Property Line	0	10'
West Property Line (adjacent Ph. II building)	0	0
Site Area (square feet)		
Net Tract Area	n/a	67,583

Proposed Dedication	n/a	10,239
Gross Tract Area	22,000	77,822
Density		
Floor Area Ratio *	2.0	1.56
Office		111,724
Retail/Restaurant		10,000
Public Use Space (% of net lot)		
On-Site Public Use Space	20	15.8
Off-Site Amenity Space	n/a	19.1
Total Public Use & Amenity Space	20	34.9
Parking		
Office/Laboratory @ 2.4/1,000 [117,724 sf]	269	
Retail @ 3.5/1,000	35	
Total Parking Required	304	
Total Parking Provided		152*

*The project is located in the Silver Spring Parking Lot District and on-site parking spaces are not required provided an applicant pays the parking lot district tax. Additional public parking spaces are provided in nearby public parking facilities. Final parking calculations will be evaluated during the site plan review.

(b) The development conforms to the Silver Spring CBD Sector Plan.

The Sector Plan has several goals that this Project Plan addresses. It describes the vision for Silver Spring in terms of six themes (pages 13-14). They are:

- 1) Transit Oriented Downtown
- 2) Commercial Downtown
- 3) Residential Downtown
- 4) Civic Downtown
- 5) Green Downtown
- 6) Pedestrian-Friendly Downtown

The Project Plan, which meets all of the themes except “Residential Downtown”, will play an important role in revitalizing this part of the CBD. The Sector Plan also

designates this site, at the corner of Colesville Road and Spring Street, as a gateway location (pages 75 & 83). The proposed building will act as a prominent gateway feature for those entering the CBD from north on Colesville Road.

Employment, Housing, & Land Use

The applicable references in the Sector Plan refer to the need for increased choices associated with retail, office, restaurants, cultural programming, open space and pathways in this area. The specific objectives with regard to this site are met as indicated:

- The proposal creates job opportunities by providing a variety and mix of uses including the office/laboratory and retail uses.
- The design promotes a pedestrian and street-activating environment by applying the Silver Spring Streetscape standards to the frontage along Spring Street and Colesville Road.
- The development consolidates multiple properties for an optional method of development to accommodate the maximum density in the CBD.
- The infill development is more environmentally sustainable because it concentrates growth near transit and other day-to-day needs, thereby reducing vehicular travel and saving open space in our suburban and agricultural areas. In addition it proposes green roofs and bio-filtration techniques at grade that will significantly improve the quality of water flowing off-site during rain events.

Zoning and Density

The Subject Property is zoned CBD-1 and will provide an FAR of 1.56 for optional method commercial projects as permitted in Sect. 59-C-6.234 (b) (ii) (A) of the zoning ordinance. The Application meets the zoning and density goals of the Sector Plan.

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

The location, size and intensity of this Application are compatible with the existing and potential development in the general neighborhood. The orientation of the various new buildings responds to the surroundings. The majority of the ground floor retail spaces have entry and exit points from the roadways and public use

areas of the site, where visibility and pedestrian activity will be greatest. The loading dock is located behind buildings, where possible, to limit truck movement through the site. The layout of the driveway is such that vehicles are directed quickly from main thoroughfares to parking garages and loading areas without having to wind through the site.

(d) The development does not overburden existing public services nor those programmed for availability concurrently with each stage of construction, if applicable: 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.

The Application will not overburden existing public facilities and services nor those programmed for availability. Vehicular access to the site is located on Spring Street in the same location as the existing vehicular access to the parking garage, approximately 220 feet from Colesville Road. An existing access point for the public garage off of Cameron Street will be re-purposed for loading and trash removal at the new building, reducing the number of vehicles using that access point. There are two additional nearby parking garages to serve the needs of the residents and employees in downtown Silver Spring, including the Planning Place parking garage on Spring Street and Cameron Street and the City Place/Downtown Silver Spring parking garage with primary access from Ellsworth Drive. The existing pedestrian alley way between Cameron Street and Colesville Road will be widened and will include improved lighting to enhance security, along with specialty paving. The sidewalks on Colesville Road and Spring Street will be widened and be upgraded with paving, landscaping and street furnishings consistent with the Silver Spring Streetscape Standards, providing for a more inviting pedestrian experience.

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

The Application will develop the site using the optional method of development, which is more efficient and desirable than the standard method of development. The optional method allows greater densities at key locations, such as proximity to mass transit, in exchange for greater public amenities and facilities. Construction of a standard method project under the CBD-1 zone would yield a development constructed to a maximum 1.0 FAR with a maximum 60 foot building height. For a site located in the Silver Spring CBD, buildings constructed to standard method

requirements would not be required to have significant public amenities or substantial open space, and would be insufficient to reach the critical mass and density envisioned for the Subject Property within very close proximity to the Silver Spring Metrorail station. Additionally, the increased focus on building design and public space would not be achieved under the standard method. Given the recommendations of the Sector Plan and the Subject Property's proximity to transit, employment and services, the optional method of development is much more desirable and efficient for this large site.

(f) The development includes moderately priced dwelling units in accordance with Chapter 25A of the Montgomery County Code.

The Application does not include residential units, therefore, this finding does not apply.

(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 following findings:

The entire net tract area will be owned by the Applicant as part of a sale from the County for public property and is in the CBD-1 zone. The development does not propose any transfers of public open space or development density from one lot to another.

(h) The development satisfies any applicable requirements for forest conservation under Chapter 22A of the Montgomery County Code.

A. Forest Conservation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) # 420131040 for the site was approved on February 13, 2013. The urban site is located within The Sligo Creek watershed, a use-class I watershed.

There are a number of street trees and landscape plantings fronting the Subject Property ranging in sizes up to approximately 1' diameter at breast height (DBH). The largest of the street trees occur along Coleville Road (Route 29).

Additionally, along the south of the site there are a number of historic trees which overhang into the Subject Property from the adjacent Montgomery Arms apartment complex. The trees associated with historic setting potentially impacted by the Application range in size from 1 to 16 inches DBH. The Subject Property is not otherwise associated with any environmentally sensitive features such as forest areas, stream buffers, wetlands, 100 year floodplains or steep slopes.

The Preliminary Forest Conservation Plan (PFCP) identifies an afforestation planting requirement of 0.27 acres. The planting requirement will either be satisfied in an off-site forest conservation bank or met by payment of fee-in-lieu. A condition of approval requires that the forest conservation planting requirements be satisfied prior to land disturbing activities occurring on-site.

The trees fronting the site, including those along Coleville Road, are proposed for removal. However, amended soil panels will be provided for the replacement street trees. The trees associated with the historic setting will be protected throughout the construction process. All of the historic trees will be retained, although some pruning of limbs will be necessary for overhead clearance. Additionally, the on-site work is within the critical root zones (CRZ) of the historic trees. However, because the trees sit above the site grade, only minimal if any impact would actually occur to roots of the historic trees. A provision for root pruning is included in the forest conservation plans in the event that the roots have grown below the wall into the construction area. Construction within the CRZ and pruning of the limbs from the historic trees is subject to a forest conservation variance.

FOREST CONSERVATION VARIANCE

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Unless the variance is granted, the law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current

State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Since the project boundary affects eight trees that part of a historic site, a variance is required. The Applicant submitted a variance request on July 25, 2013 for the impact to, but retention of eight trees associated with the Application that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

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. In addition to the required findings outlined numerically below, the Planning Board has determined that enforcement of the variance provision would result in an unwarranted hardship for the following reason:

The variance trees are growing at the top of a retaining wall approximately six feet above the Subject Property. The wall itself is proposed to remain undisturbed and it is unlikely that significant roots would actually be found growing on the United Therapeutics site at the bottom of the wall. Furthermore, the subject trees have low branches that are partially obstructing the existing walkway (taller pedestrians need to duck under the branches to use the sidewalk as it exists now). The walkway material will be upgraded however the walkway use is proposed to remain. Not allowing pruning of the branches or work below the wall therefore would be a hardship. The Planning Board finds that based on the existing circumstances and conditions on the Subject Property, there is an unwarranted hardship.

Variance Findings - The Planning Board finds that granting the Variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other Applicants.*

The pruning of the limbs to allow appropriate passage of the existing sidewalk (proposed to remain) would be allowed and should occur even if the site were not redeveloped. The minor impact to the subject trees CRZ is necessary for site access and would cause only minimal if any actual impacts to roots. Therefore, the variance request would be granted to any applicant in a similar situation.

2. *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 for basic maintenance of an existing walkway within an urban pedestrian corridor and not the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is not a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. No subject trees are proposed for removal; furthermore, the Department of Permitting Services (DPS) staff approved the stormwater management (SWM) concept for the project on August 15, 2013. The concept incorporates green roofs, bio filtration planters and tree pits. The DPS review and ultimate approval of the sediment and erosion control and stormwater management plans will ensure that appropriate standards are met.

- (i) The proposed development satisfies any applicable requirements for water quality resources protection under Chapter 19 of the Montgomery County Code.*

The Subject Property is located in within the Sligo Creek watershed.

The proposed Stormwater management concept for the preliminary plan stage was deemed acceptable by the Department of Permitting Services on August 15, 2013. The concept meets the required Stormwater management goals by the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) with the use of a green roof and micro-bioretenion/planter boxes.

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

The off-site public use space and amenities are consistent with the goals of the Sector Plan and will better serve the public interest by contributing to the funding and construction of an off-site amenity as part of the transit station. As conditioned, the Applicant will be making a contribution to the Amenity Fund in the amount of \$314,736 to address the shortfall in the amount of on-site public use space (about 4.2%). Total on-site public use space is approximately 15.8% of net lot area.

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 Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

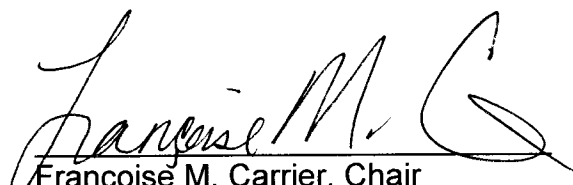
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board and that the date of this Resolution is ~~OCT 15 2013~~ (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 Vice Chair Wells-Harley, 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, October 3, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board