



MCPB No. 16-059
Preliminary Plan No. 120160270
Sligo ArtSpace
Date of Hearing: July 21, 2016

AUG 23 2016

RESOLUTION

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

WHEREAS, on April 6, 2016, Artspace Projects, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 12 lots on 2.75 acres of land in the CRNF-1.25, C0.25, R1.0, H65 zone, located at 801 Sligo Avenue, in the northwest corner of the intersection of Sligo Avenue and Grove Street ("Subject Property"), in the Silver Spring-Takoma Park Policy Area and the East Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160270, Sligo ArtSpace ("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 July 11, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 21, 2016, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 21, 2016, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley, seconded by Commissioner Fani-Gonzalez, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120160270 to create 12 lots on the Subject Property, subject to

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

MNCPPC Legal Department
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

the following conditions:¹

1. This Preliminary Plan is limited to 12 lots with associated open space parcels for up to 130,000 square feet of development, including up to 110,000 square feet of residential uses, with up to 68 multi-family units and 11 townhomes, and up to 20,000 square feet of non-residential uses, with up to 30 artist studios and 1,500 square feet of retail.
2. Include the stormwater management concept approval letter and Preliminary Plan resolution on the approval or cover sheet(s).
3. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan no. 120160270, approved as part of this Preliminary Plan, subject to the following:
 - a. Before Certified Site Plan approval, the Applicant will coordinate with Staff on any necessary minor plan revisions, clarifications and corrections within the Final Forest Conservation Plan signature set.
 - b. Subject to WSSC approval, the sewer line connection within the paper street alley shall be specified as directionally bored within the CRZ of Tree 1. Associated excavation pit(s) shall be located east of the existing concrete driveway apron for the eastern tie-in, and out of the CRZ of tree #1 for the western segment. If the Applicant is unable to obtain WSSC approval after good faith efforts, the Applicant must perform monitoring and maintenance on the tree for a period of five years from the date of this resolution.
 - c. Reduce disturbance near Tree 13 to the greatest extent possible, however any trenching and/or excavation shall be no closer than 5 feet offset from the location of the pipe as currently proposed. Equipment access between the tree and 5-foot offset may occur if the area is appropriately armored with temporary root protection matting.
 - d. All tree protection measures must be certified by an International Society of Arboriculture certified arborist who is also a Maryland Licensed Tree Care Expert.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 10, 2016, except comment 2.b) regarding Grove Street, and as modified by a July 6, 2016, email from Beth Dennard to the Applicant, and hereby incorporates all others as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended

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.

by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 29, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. 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.
7. The Applicant must dedicate and show on the record plat(s) the following dedications:
 - a. Five (5) feet from the existing right-of-way line along the Subject Property frontage for Sligo Avenue Road.
 - b. Five (5) feet from the existing right-of-way line along the Subject Property frontage for Grove Street.
8. The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
9. 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 issuance 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.
10. The record plat must show necessary easements, including common ingress/egress and utility easements over all shared driveways.
11. The record plat must identify any stormwater management parcels.

12. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
13. The Applicant must comply with the binding elements of County Council Resolution No. 18-405 approving Local Map Amendment H-110.
14. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.
15. The Subject Property is within the Blair School cluster area. The Applicant must make a School Facilities Payment to MCDPS at the high school level at the single-family attached and multi-family 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.
16. Prior to recordation of any plat, Site Plan No. 820160140 must be certified by MNCPPC Staff.
17. No clearing or grading of the site prior to certified site plan approval.
18. Final approval of the number and location of (buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths) will be determined at site plan.
19. Record Plat may be submitted for review prior to Certified Site Plan.

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.*

The Subject Property is located within the 2000 *East Silver Spring Master Plan*, the major emphasis of which "is to support stable residential neighborhoods and to assure linkages to commercial centers and public facilities." The Master Plan recommendations seek to achieve this through four general themes for the entire Master Plan area, as well as a specific recommendation for the Subject Property.

The proposed development echoes these general themes:

Community Preservation, Stability, and Character. *Preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring.*

In furtherance of the Master Plan's goal to preserve the existing residential character and encourage compatible reinvestment, the Preliminary Plan will increase the range of the housing stock through the development of townhouses and multi-family units on the Subject Property. It preserves and enhances the existing residential neighborhood by providing an affordable mixed-use, predominantly residential development, which serves as a buffer and provides an appropriate transition between the more intensive uses in the CBD and the single-family residential areas just outside the CBD.

Commercial Centers: *Improve commercial centers to better serve the needs of local and area residents and people passing through the area.*

Although the Subject Property is located just outside the CBD area of Fenton Village, the development will improve that commercial center and the Silver Spring CBD as a whole by providing a center of arts activity that has the potential to attract people who might typically pass through the area to stay in the area to experience some art and then dine in one of the many nearby restaurants. Further, the creation of a center for art activity will further raise the profile of the CBD as a cultural destination.

Community Facilities, Parks and Environmental Resources. *Support the community facilities and parks and protect the environmental resources that contribute to community identity and provide valuable services and programs.*

The Preliminary Plan will result in significant improvements to the natural and pedestrian environment by creating additional green space, reducing the amount of impervious area on-site, and providing on-site stormwater management treatment, where there currently is none.

Neighborhood-friendly Circulation. *Provide safe, pleasant and convenient pedestrian access to places people want to go while accommodating local and regional traffic.*

The Preliminary Plan will provide a pedestrian-friendly environment that will promote pedestrian and bicyclist access, with streetscape improvements along Sligo Avenue and Grove Street, and the realization of a through-block connection between Sligo Avenue and Silver Spring Avenue.

The Master Plan also makes the following specific recommendations for the Subject Property:

Increase the range of the housing stock by recommending the site currently occupied by the police department on Sligo Avenue for townhouses, if it becomes available for private development.

If the police station moves from this location and becomes available for redevelopment, under County policy public reuse of the site will be given first priority. If public reuse of the site is not appropriate, the site may be privately developed under the R-60 or the RT-8 Zone.

After the police station relocated from the Subject Property to White Oak in 2014, the County issued a request for proposals for a public-private partnership to redevelop the site. In partnership with the surrounding community, the County selected the Applicant's proposal for redevelopment of the site. The Applicant's development will both enhance the public use of the site, as described under discussion of the general themes above, by creating inviting uses and public spaces. In addition, construction of townhouses and multi-family units will increase the types of housing stock available in East Silver Spring.

The Application is consistent with the goals and guidance of the *East Silver Spring Master Plan*.

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

Master Plan Roadways and Pedestrian/Bikeway Facilities

The following is a summary of recommendations included in the 2000 Approved and Adopted *East Silver Spring Master Plan* and the 2005 Approved and Adopted *Countywide Bikeways Functional Master Plan*:

1. Sligo Avenue (A-87): A two-lane Arterial roadway with a minimum master planned right-of-way of 50 feet between the Silver Spring CBD and Piney Branch Road. This roadway is recommended to have master planned on-road bicycle facilities located along this segment.
2. Although not discussed in the *Master Plan*, Grove Street runs along the eastern property frontage and functions as a secondary residential street within a 30-foot-wide right-of-way along the property frontage.

Sligo Avenue is recommended to have on-street bicycle lanes to connect the Silver Spring CBD with the East Silver Spring/ Takoma Park communities. Although the subject application does not propose implementing bicycle lanes, it does not preclude future implementation of that facility.

Pedestrian Facilities and Public Transit Service

The Subject Property frontages on both Sligo Avenue and Grove Street have existing variable width sidewalks located at the back-of-curb. These sidewalks are part of a continuous sidewalk network connecting the Subject Property with Downtown Silver Spring and the surrounding residential area.

The Montgomery County Department of Transportation (MCDOT) is requiring that the Applicant either narrow the pavement width of Grove Street by two feet or relocate the existing utility poles further into the site. MCDOT's concern is that the existing proximity of the utility poles to the existing curb is an unsafe condition. Based on Staff's analysis of this issue and given concerns raised by the community and the Applicant, the Planning Board does not accept MCDOT's recommendation and encourages MCDOT to evaluate the street system as a whole for other improvements that may address MCDOT's concerns.

Transit service is available from bus stops immediately adjacent to the Subject Property frontage. That bus stop is served by Montgomery County Ride On Route 16, which runs between Silver Spring and Langley Park-Takoma. Beyond the Subject Property frontage, Ride On Route 17 and WMATA Metrobus Route F4 are accessible from bus stops on Fenton Street.

Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR)

The Applicant submitted a traffic exemption statement to satisfy the Local Area Transportation Review because the proposed land use generates fewer than 30 total peak-hour trips within the weekday morning and evening peak periods. The land use is anticipated to generate 26 morning peak hour trips and 25 evening peak hour trips. Ordinarily, the Applicant would satisfy the TPAR test by paying 25% of DPS's transportation/development impact tax located in the Silver Spring/Takoma Park Transportation Policy Area. However, since more than 25 percent of the units are affordable housing, the project is not required to make a TPAR payment.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject Property will 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 the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property. Electrical,

telecommunications, and gas services are also available to serve the Subject Property.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. As discussed above, the Application substantially conforms to the 2000 *East Silver Spring Master Plan*. The Application complies with the specific density recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Master Plan.

Under Section 59-4.5.4 of the Zoning Ordinance, the dimensional standards for the lots will be determined with approval of the subsequent site plans.

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

A. Forest Conservation

The Planning Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. Although no forest exists onsite, the application is subject to the Forest Conservation Law and there is an afforestation requirement of 0.43 acres. Given the relatively small size of the Subject Property, the lack of environmentally sensitive areas, and the modest amount of afforestation requirements, the afforestation will be satisfied offsite by either a fee-in-lieu payment or the use of a forest conservation bank. Furthermore, due to the proposed density of the development and the priority to provide onsite mitigation plantings for the variance trees under Section 22A-12b (3), the Subject Property is not an appropriate setting to also accommodate landscape plantings applied toward forest conservation requirements.

B. 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.

In accordance with Section 22A-21(a), the Applicant requested a Variance to remove three Protected Trees and to impact the CRZs of four Protected Trees. However, the Planning Board agrees with Staff that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without a Variance to remove only one of the three Protected Trees and to impact the CRZs of four Protected Trees, as identified in the Staff Report. The Applicant's request for a Variance to remove the other two Protected Trees is denied.

The Board makes 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.*

As conditioned, the impacts are avoided or minimized to the greatest extent possible and are generally associated with utility modifications within the built ROW where such impacts are anticipated. Therefore, the variance request would be granted to any Applicant in a similar situation.

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 proposed development allowed under the existing zoning and the need to achieve adequate utility and storm drain connections. The variance can be granted under this condition if the impacts are avoided or minimized (as conditioned) and that any necessary mitigation is provided.

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 generally a result of the sewer and storm drain modifications in the right-of-way that is included within the net

tract area of this project 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.*

The subject area is not directly associated with any streams, wetlands or related buffers. The Department of Permitting Services (DPS) staff approved the stormwater management (SWM) concept for the project on June 29, 2016. The SWM concept proposes to meet required stormwater management goals by the use of micro-bioretenion, with the remaining volume to be treated by a structural sandfilter. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality. Additionally, the mitigation plantings will contribute to these goals.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approved replacement of the Protected Tree at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. This means that for the 34 diameter inches of tree to be removed, the Applicant must provide mitigation of at least 8.5 inches of caliper replacements. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The MCDPS Stormwater Management Section approved the stormwater management concept on June 29, 2016, which uses environmental site design to the maximum extent possible through the use of micro-bioretenion, with the remaining volume to be treated by a structural sandfilter.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 85 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 AUG 23 2016 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Fani-González voting in favor, Commissioner Cichy abstaining, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, July 28, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850
By email rick.brush@montgomerycountymd.gov

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AENUE
4TH FLOOR
ROCKVILLE, MD 20850
By email lisa.schwartz@montgomerycountymd.gov

MR. MARK BEALL
MCDPS-ZONING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.beall@montgomerycountymd.gov

MR. CHRISTOPHER ANDERSON
MPDU MANAGER, DHCA
100 MARYLAND AVENUE, 4TH FLOOR
ROCKVILLE, MD 20850
By email
Christopher.anderson@montgomerycountymd.gov

SAMUEL SHAWN
1330 NEW HAMPSHIRE AVE
SUITE 214
WASHINGTON, DC 20036

BECKY CARLSON ST. CLAIR
4508 GARFIELD AVE
MINNEAPOLIS, MN 55419

MR. GREG LECK
MCDOT
101 MONROE ST
10TH FLOOR
ROCKVILLE, MD 20850
By email greg.leck@montgomerycountymd.gov

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
atiq.panishiri@montgomerycountymd.gov
MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
christina.contreras@montgomerycountymd.gov

MR. ALAN SOUKUP
MCDDEP-WATER & WASTEWATER POLICY
255 ROCKVILLE PIKE, SUITE 120
ROCKVILLE, MD 20850
By email alan.soukup@montgomerycountymd.gov

HARRY JENKINS
VIKA
20251 CENTURY BLVD
SUITE 400
GERMANTOWN, MD 20874

KAREN ROPER
ESSCA
7911 CHICAGO AVE
SILVER SPRING, MD 20910

MR. MARK ETHERIDGE, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.etheridge@montgomerycountymd.gov

MR. ESHAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email eshan.motazedi@montgomerycountymd.gov

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email gene.vongunten@montgomerycountymd.gov

PATRICIA HARRIS
LERCH, EARLY AND BREWER
3 BETHESDA METRO CENTER
SUITE 460
BETHESDA, MD 20814

MIKE GOODMAN
VIKA
20251 CENTURY BLVD
SUITE 400
GERMANTOWN, MD 20874