

Date Mailed: FEB 16 2005

Action: Approval with conditions  
Motion of Commissioner Bryant,  
seconded by Commissioner Perdue,  
with a vote of 4 to 1;  
Chairman Berlage and Commissioners.  
Bryant, Perdue and Robinson voting in  
favor. Commissioner Wellington voting  
against.

## MONTGOMERY COUNTY PLANNING BOARD OPINION

Project Plan Review No.: 9-04003A  
Project: Portico, 1203 Fidler Lane

The date of this written opinion is FEB 16 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal in Circuit Court within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions (Rule 7-203, Maryland Rules of Court - State).

### I. INTRODUCTION

On May 12, 2004, 1203 Fidler Lane, LLC (the "Applicant") submitted a revised Project Plan Application<sup>1</sup> designated Project Plan No. 9-04003A (the "Project Plan") and a revised Preliminary Plan Application designated Preliminary Plan No. 1-04040A (the "Preliminary Plan") (collectively with the Project Plan, the "Plans") for approval of 170,000 gross square feet ("SF") of residential development, including 158 residential

<sup>1</sup> On November 12, 2003, the Applicant filed a Project Plan Application, designated Project Plan No. 9-04003 and a Preliminary Plan Application, designated Preliminary Plan No. 1-04040, proposing the development of a six-story, 68 unit residential condominium apartment building on the Property, which required certain easements from the adjacent townhouse community known as Cameron Hill. The Cameron Hill Owners Association (the "Cameron Hill HOA") would not grant the Applicant easements required to implement those proposed plans. The Applicant revised the original plans, and those amended plans are the subject of this Opinion.

condominium apartment buildings with 24 moderately priced dwelling units ("MPDUs") and associated amenities discussed in detail below (the "Project").<sup>2</sup> The Project is situated on one lot containing approximately 0.65 acres and is located at 1203 Fidler Lane, 100 feet southwest of Ramsey Avenue, in downtown Silver Spring (the "Property"). The Property is located in Silver Spring's Central Business District ("CBD") and is zoned CBD-R2.

On July 9, 2004, official notices of the public hearing scheduled for July 22, 2004, for the Plans were sent to the adjoining and confronting property owners, local community associations, and other organizations that requested notice. Further, in accordance with Chapter 59 of the Montgomery County Code (the "Zoning Ordinance") a sign was posted on the Property facing Fidler Lane, which provided the required information regarding the filing of the Project Plan with the M-NCPPC. Thereafter, at the request of the Applicant as an accommodation to the Cameron Hill HOA, and with the Board's approval, the public hearing on the Plans was rescheduled to September 23, 2004, to allow ongoing discussions regarding the Project with the Cameron Hill HOA to continue. On September 14, 2004, M-NCPPC sent letter to adjoining and confronting property owners, associations and organizations that had been previously notified of the public hearing confirming the rescheduled hearing date of September 23, 2004.

## **II. THE SUBJECT PROPERTY**

The Property consists of approximately 0.6525 acres, comprised of parts of two lots, zoned CBD-R2 and located in downtown Silver Spring at 1203 Fidler Lane. The Property is currently improved with a surface parking lot. The Property is surrounded by CBD-R2 properties directly to the west and across Ramsey Avenue that include Cameron Hill, Cubanos Restaurant, Mi Rancho Restaurant and the Tastee Diner. The 14-story commercial office located to the south across Fidler Lane is zoned CBD-3 and the McDonald's site at the intersection of Route 29 and Second Avenue is zoned CBD-2. The 17-story office complex located across Second Avenue from the Property is zoned CBD-3 as is the 15-story residential complex known as Alexander House, located on Second Avenue north of the Property. The 6-level County parking garage (identified as Garage No. 7) and commercial building across Cameron Street is zoned CBD-2. The Property is located approximately 500 feet from the entrance of the Silver Spring Metro Station.

The Property is separated from Cameron Hill Court, a private alley that serves Cameron Hill, by a retaining wall and wood fence. The Property directly fronts on Fidler Lane, which is unimproved at the frontage of the subject Property. The opposite side of Fidler Lane is improved with the standard Silver Spring streetscape including street trees and paving.

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<sup>2</sup> The Preliminary Plan is the subject of a separate opinion.

The topography on the Property slopes from north to south by approximately 16 feet. The high point of the Property is at the northwest corner adjacent to Cameron Hill Court and the corner of Cubanos Restaurant (Lot 5). There is no significant vegetation on the Property with the exception of three large shade trees on the existing lot line of Lots 1 and 2 from Fidler Lane to Cameron Hill Court.

The Property is located within Silver Spring's Central Business District, which is subject to the Sector Plan. The Sector Plan does not specifically identify the Property as a potential housing site, however, it does encourage housing as an important component to the Sector Plan and does recommend a residential zone for the Property.

### **III. THE PROJECT**

The Plans request approval for 170,000 SF of residential development, including 158 residential condominium units, of which 24 (15%) will be MPDUs. The proposed building will be 139 feet in height (13 floors), in accordance with the height requirements in the CBD-R2 Zone. The majority of the building will be set back approximately 17 feet from the proposed curb-line on Fidler Lane and approximately 10 feet from the rear property line abutting Cameron Hill Court. The lobby and main entrance will be located in the center of the site directly on Fidler Lane with condominium units primarily located on the second through thirteen floors. Two of the residential units are located on the ground floor. A business center, fitness room, social room and office will also be located on the first floor. Recreation facilities will include private workout areas in the fitness room and private seating areas within the pocket park and plaza.

The building also will provide 89 underground parking spaces in a below-ground parking garage accessed via an entrance from the south end of Fidler Lane. Twenty of the 89 spaces are proposed as vault parking spaces and, if constructed under the public right-of-way for Fidler Lane, will require approval from Montgomery County.

The Plans proposes significant on-site and off-site public amenities and use spaces, which total 46% of the gross tract area of the Property, including:

#### **Fidler Lane Public Plaza**

- A brick paved public plaza along site frontage to compliment streetscape improvements
- A public park located adjacent to the building and containing approximately 4,600 SF that will feature six hand-carved benches made of cut stone to reinforce the sculpture concept.

- A Public Art Program including a 16-foot-tall, hand-carved stone sculpture in the form of an “Arc” reaching skyward which will act as a marker for the outdoor public space adjacent to the proposed building.
- Specialty lighting in the plaza and up lighting of the art sculpture to softly accentuate and visually activate the plaza at night.
- The paving in the plaza will be designed with a curving pattern that compliments the sculpture and the benches.
- Landscape beds and planters with irrigation and plant material for seasonal accent and color and plaza trees to compliment the streetscape and provide shade.
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan

#### Fidler Lane Right-of-Way

- Streetscape on the west side of Fidler Lane along the entire property frontage and extended to the intersection with Ramsey Avenue to include Street trees (Honey Locust), Brick Pavers and Street Lights (Washington Globe) consistent with Silver Spring Streetscape Plan Technical Manual.
- Brick driveway apron consistent with patterns proposed in the plaza, entrance to parking garage from Fidler Lane
- Granite sets within the tree pits as specified in the Silver Spring Streetscape Plan Technical Manual
- Existing overhead utilities to be installed underground consistent with the Silver Spring Master Plan

#### Ramsey Avenue Right-of-Way

- Streetscape on the south side of Ramsey Avenue along the frontage of Lot 5 (presently Cubanos Restaurant) to include Brick Pavers and Street Lights (Washington Globe), where adequate existing right-of-way is available, consistent with Silver Spring Streetscape Plan Technical Manual

#### IV. PUBLIC HEARING

On September 23, 2004, the Plans were brought before the Montgomery County Planning Board for a public hearing in accordance with the requirements of Art. 28, Md. Ann. Code ("Regional District Act"), Zoning Ordinance and the Planning Board's Rules of Procedure. At the public hearing, the Montgomery County Planning Board heard testimony regarding the Plans from Staff and representatives of the Applicant in support of the Plans and from representatives of the Cameron Hill HOA, and individual property owners and business owners in the neighborhood who were in opposition to certain aspects of the Plans. Before and during the hearing, the Planning Board received evidence submitted in the record on the Plans, including, without limitation, a Staff Report and analysis of the Project Plan, a vicinity map, plan drawings, a Compatibility Study submitted by the urban planning expert retained by the Applicant (the "Applicant's Planning Expert"), a Parking Analysis submitted by the traffic expert retained by the Applicant (the "Applicant's Traffic Expert"), a Seasonal Shadow Study submitted by the Applicant's architect, various other exhibits, and correspondence from the Applicant in support of the Plans, and the Cameron Hill HOA and individual property owners and business owners in the vicinity of the Property in opposition to the Plans.

The Applicant testified that it was in agreement with Staff's recommended conditions of approval, with modifications the Board approved. The main issues raised at the hearing involved the compatibility of the Project with the Cameron Hill townhouse community and the adequacy of the on-site parking provided for the Project.

##### A. Compatibility of the Project with the Cameron Hill Townhouse Community

At the public hearing, Staff described the mix of architecture, height and massing within the Cameron Street, Georgia Avenue and Colesville Road corridor, which includes both the Property and the Cameron Hill community. Staff testified that the Property is surrounded by CBD-R2 properties directly to the west and across Ramsey Avenue that include Cameron Hill, Cubanos Restaurant, Mi Rancho Restaurant and the Taste Diner. The 14-story commercial office located to the south across Fidler Lane is zoned CBD-3 and the McDonald's site at the intersection of Route 29 and Second Avenue is zoned CBD-2. The 17-story office complex located across Second Avenue from the Property is zoned CBD-3, as is the 15-story residential complex known as Alexander House, located on Second Avenue north of the Property. The 6-level County parking garage (identified as Garage No. 7) and commercial building across Cameron Street are zoned CBD-2. Given the range, in terms of height, massing and architecture, of existing commercial and residential development surrounding the Property, Staff testified that the Project is complementary to and compatible with existing development, including the Cameron Hill townhouse community and is in accordance with the goals and recommendations of the Silver Spring CBD and Vicinity Sector Plan, approved and adopted in February 2000 (the "Sector Plan"). In particular, with regard to the compatibility of locating a 13-story building as proposed in the Project Plan adjacent to

the 3-story townhouses at Cameron Hill, Staff noted that both the Cameron Hill development and the Project are in the CBD-R2 zone and the Project complied with all zoning standards of the CBD-R2 zone, including height, density and setbacks. Staff also testified, in response to question from Board members, that there were other instances of high-rise development adjacent to townhouses in the Silver Spring CBD and that it was appropriate in an urban environment, such as the CBD, to build high-rise residential buildings adjacent to residential townhouses. In this regard, Staff also testified that the compatibility of the Project with Cameron Hill was enhanced by architectural and operational features of the proposed building, such as masonry façade materials, and the location of the entrance on Fidler Lane away from Cameron Hill.

The Applicant, in its initial presentation to the Board, also testified that the Project would be compatible with surrounding uses, including the Cameron Hill community, and submitted into the record a Compatibility Analysis prepared by Applicant's Planning Expert showing that the Project will be compatible with Cameron Hill, and a Seasonal Shadow Study prepared by the Applicant's architect showing there will be minimal impact on Cameron Hill by shadows cast from the proposed building. The Applicant also submitted into the record a Parking Analysis prepared by Applicant's Traffic Expert, which is discussed in greater detail below.

Following the Applicant's initial testimony, representatives of the Cameron Hill HOA and several individual property owners testified in opposition to the Project on the grounds the density and height of the building were not compatible with the smaller scale townhouses at Cameron Hill. Speakers also testified the building was located too close to Cameron Hill and would have a detrimental impact on their property in the form of increased shadows over the townhouses in their development. Finally, one speaker testified that the Applicant's exhibits did not accurately depict the relationship between the Project and Cameron Hill.

In rebuttal, the Applicant noted that most of the Cameron Hill townhouse units were closer to existing high-rise buildings than to the proposed building. The Applicant's Planning Expert also testified, as detailed in the Compatibility Study, that the Project provided an appropriate transition between commercial development in the Silver Spring core to the south of the Property and residential development, including Cameron Hill, to the north and the Project would be compatible with Cameron Hill in the urban environment of downtown Silver Spring. The Applicant's Planning Expert further testified that the design elements of the Project, including landscaping and the public park that will abut Cameron Hill, enhanced that compatibility of the Project with the Cameron Hill townhouses. Finally, the Applicant reviewed the Seasonal Shadow Study prepared by its architect that showed because of the orientation of the proposed building, and the location of a taller (15-story) building to the south of the Property and Cameron Hill, there would be minimal impact on the Cameron Hill community from shadows cast by the proposed building.

The Applicant at the public hearing made several proffers regarding the design and operation of the building in response to concerns raised by Cameron Hill, as follows<sup>3</sup>:

1. Remove the existing wood fence and masonry wall on the Cameron Hill property at the shared property line and install a new fence constructed of wrought iron and masonry on the Property.
2. Relocate the fitness room from the rear of the building facing Cameron Hill to the front of the building.
3. Eliminate the center tier of balconies on the rear of the building and convert the balconies to "Juliet" style openings.
4. Construct the two remaining tiers of balconies on the rear of the building with opaque glass screen railings.
5. Utilize masonry materials on the exterior of the building
6. Allow the Cameron Hill HOA use of the Portico community room for HOA meetings once per month.
7. Limit the hours of operation of the private amenity space in the back of the proposed building.

The Applicant testified, at the hearing and in writing, that these proffers were contingent on the Cameron Hill HOA granting the routine easements necessary to allow removal of the existing fence and to construct the new fence and the customary tie-back easements regularly required for the construction of below ground structures.

Commissioner Wellington disagreed with Applicant's and Staff's analyses that the Project is compatible with the existing development and found that the Project was not compatible with the Cameron Hill development because the proposed height of the Project did not create enough of a transition between the Cameron Hill development and the taller buildings in the general neighborhood. In addition, Commissioner Wellington expressed concerns related to the amount of public parking available in the area.

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<sup>3</sup> The Applicant testified that the Property was under contract for purchase by Centex Homes and that the proffers, as conditions of approval of the Project Plan, would be binding on such subsequent purchaser in the development of the Project.

B. The Adequacy of On-site Parking for the Project

Staff testified that the Plans proposed 89 parking spaces on-site in a below ground parking structure accessed via a driveway entrance on Fidler Lane. Of the 89 proposed spaces, 20 spaces are proposed to be located in a parking vault under the public right-of-way for Fidler Lane. Staff testified that vault parking under the public right-of-way required approval by Montgomery County, which the Applicant was in the process of obtaining. Staff also testified that the Applicant was not required to provide any parking spaces for the Project because the Property is located in the Silver Spring Parking Lot District (the "PLD") and the Project will be subject to the PLD tax. Staff also reviewed the location and capacity of public parking garages in the vicinity of the Property. Staff testified that there was adequate public parking in the vicinity of the Property to meet the parking needs of residents of the Project and surrounding uses. Staff also testified that by limiting on-site parking and providing a significant number of residential units in close proximity to the Metro, the Application was promoting the goals of the Sector Plan and the County's Annual Growth Policy to promote use of mass transit.

The Applicant also testified, in its initial presentation to the Board, that because the Property was in the PLD, no parking spaces were required for the Project pursuant to Section 59-E-5.2(a) of the Zoning Ordinance. The Applicant further testified that based on (i) the number of on-site spaces proposed in the Plans, (ii) the adequacy of parking spaces in public parking garages in the CBD, and (iii) the proximity of the Property to Metro, there would be adequate parking to meet the needs of the residents of the Project and surrounding uses, including the restaurants in the vicinity of the Project.

Representatives of the HOA and the Cubanos and Mi Rancho restaurants testified that they were concerned because of current problems with the adequacy of parking for patrons on adjacent streets and in public parking garages during certain times of the day, including lunch time. Speakers pointed out that parking availability had been greatly reduced since the County's new District Courthouse had opened nearby. The restaurant owners testified that the lack of adequate parking was detrimental for their businesses. The Cameron Hill HOA and several individual property owners testified that the Applicant should provide one parking space for each unit in the building.

In rebuttal, the Applicant's Traffic Expert reviewed his Parking Analysis, which included counts taken in September, 2004 after the new County District Courthouse had opened on Second Avenue across from a section of Cameron Hill. The Parking Analysis detailed the number of parking spaces available at various times of the day in Garage No. 7 and the overall capacity of the public garages in the PLD system, which includes five public garages within one-quarter mile of the Property, including Garage No. 7, located closest to the Property. The Applicant's Traffic Expert testified that a sufficient



number of vacant parking spaces are currently available in the PLD system to adequately accommodate the parking demands of the Project and surrounding uses. The Applicant's Traffic Expert also testified that the Project would attract residents with fewer cars than the average home buyer in the County given the proximity of the Property to the Metro and that by limiting on-site parking, the Project would promote the public policy of increasing transit use. Further, the Applicant's Traffic Expert testified that the demand for parking from residents of the Project would be highest in the early morning and evening hours, during which periods there was adequate capacity in the public parking garages in the PLD system, including Garage No. 7. Therefore, the parking demand from the Project would not exacerbate any perceived shortage of short-term public parking in the mid-day period. The Applicant's Traffic Expert concluded that the Project would not have an adverse impact on neighboring properties, or overburden public facilities for parking.

#### **V. PLANNING BOARD FINDINGS**

Based on the testimony and evidence presented and the Staff Report and the materials submitted into the record, which are made a part hereof, and pursuant to Section 59-D-2.42 of the Zoning Ordinance, the Board expressly finds with respect to the Project Plan as follows:

**(a) *The Application, as conditioned, would comply with all of the intents and requirements of the zone.***

Section 59-C-6.212 of the Zoning Ordinance states that the CBD zones are designed to accomplish the following:

- (1) *"To encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under Chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the site plan or combined urban renewal project plan is approved on review by the Planning Board."*

While the Sector Plan does not specifically identify the property as a potential housing site, it does recommend a residential zone for the Property and, at pages 19-20 and 111-112, encourages housing as an important component to the revitalization efforts for the core area. The Board finds the Project Plan, as conditioned, will accomplish important Sector Plan objectives by providing a significant number of for-sale condominiums, including MPDUs, in the Silver Spring area. Further, the Project Plan proposes to use the Optional Method of Development, which permits an increase in residential density and building height in the CBD, as recommended in the Sector Plan. High density residential is a permitted use that is consistent with the intent of the CBD-R2

zone. The building will be 13 stories (139 feet) in height, which is in conformance with the Zoning Ordinance that permits up to 143 feet in height under the Optional Method. The Project Plan is also proposing 158 dwelling units, including 24 or 15% MPDUs provided on-site, which reflects a density of 200 units per acre, plus a bonus density of 22% for providing 15% MPDUs. This density is permitted under the zone.

Finally, by improving an existing private surface parking lot that detracts from the appearance of the surrounding area, providing an appropriate transition among surrounding adjacent residential and office uses and providing significant public use space including public art on the Property, the Project Plan will contribute to the revitalization of the core. In addition, the proposed streetscape improvements along Fidler Lane and Ramsey Avenue improve the pedestrian corridor to and from the Metro.

- (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 Planning Board finds the Project responds to the need for housing in downtown Silver Spring and addresses the County's smart growth policy to locate development where infrastructure, community facilities and elements of an urban district already exist. The Board also finds the Project supports the economic base in the downtown by making it attractive for workers in Silver Spring to live near their jobs. The Project will also increase the vitality of the Silver Spring core area and add an economic infrastructure for commercial and retail businesses in the core area.

In addition, the Project Plan encourages the development of active urban streets by providing public spaces along street edges and improves the quality of pedestrian environment for workers and residents in the CBD. Finally, the Project will serve as a catalyst for further redevelopment in the core area of downtown Silver Spring by replacing surface parking with an attractive residential building with urban upscale design features.

- (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 Planning Board finds the Project compliments, and is compatible with, the scale and mix of existing buildings and design elements on Fidler Lane, Ramsey Avenue, Cameron Street and Second Avenue. The Board acknowledges the position of Cameron Hill and the individual property owners

in the vicinity of the Project who testified that the proposed building was not compatible because of its height and proximity to the adjacent townhouses. However, the Board notes that the Project is proposed for an urban area and conforms to all applicable requirements of the CBD-R2 zone regarding height and setbacks. The Planning Board finds persuasive Staff's testimony at the public hearing that the Project is compatible with heights, which range from 1-story to 17-stories, and massing of existing buildings within the Cameron Street, Georgia Avenue and Colesville Road corridor that includes both the Property and Cameron Hill. Further, the Board finds persuasive shadow studies presented by the Applicant, which show there is minimal additional impact on the adjacent community as a direct result of the height of the proposed building.

The Planning Board accepts Applicant's proffer to provide certain architectural design and operational features and finds that the proffered features help produce a desirable relationship between the individual buildings. The Planning Board also finds that the improved streetscape that will be provided by the Project will complete a portion of an improved pedestrian link on the south side of Fidler Lane and complete a portion along the south side of Ramsey Avenue. The design creates an effective relationship with adjacent uses and amenities and allows for a more interactive pedestrian and vehicular circulation.

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

The Project is located approximately 500 feet (5 minute walking distance) from the Silver Spring Metro Station. The Planning Board finds that the proximity to transit facilities and the downtown employment core, as well as limited on-site parking, will reduce the dependency on the automobile for the residents of the development and, thereby promote the effective use of transit facilities.

The Board also finds the streetscape improvements proposed along Fidler Lane and Ramsey Avenue facilitate pedestrian connectivity to the Metro station. The completed streetscapes along the north side of Ramsey Avenue and on both sides of Cameron Street direct pedestrian circulation to Georgia Avenue and the other businesses in the downtown corridor.

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

The Project Plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing the enhancement to the streetscape on Fidler Lane and Ramsey Avenue. The Planning Board also finds the streetscape improvements along Fidler Lane

and Ramsey Avenue will improve pedestrian connectivity in and around the Silver Spring core, and particularly to the bus and metro station. The completed streetscapes along the north side of Ramsey Avenue and on both sides of Cameron Street direct pedestrian circulation to Georgia Avenue and the other businesses in the downtown corridor.

The Board further finds that the Project Plan will enhance vehicular circulation by improving the right-of-way along the west side of Fidler Lane. An additional 17.5 feet is being dedicated on the Applicant's Property line to widen Fidler Lane to a total of 60 feet. The full width right-of-way dedication will ensure complete accommodation of the optional method streetscape treatment on the Property's Fidler Lane frontage. The entrance to the parking garage is located at the southeastern end of Fidler Lane toward the end of the proposed building so as to accommodate existing grading on the Property and maximize the number of parking spaces in the 2-level below grade parking garage. Signs indicating traffic circulation in and out of the garage will promote safety for pedestrian activity in the public use space.

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

The Planning Board finds that the Project Plan will assist in the development of residential housing for people with a wide range of incomes by providing 24 MPDUs within the building, which represents 15% of the total number of dwelling units (12.5% is required). In addition, the Project will increase the supply of for-sale condominium units that will appeal to buyers who may not want, or cannot afford, a townhouse or detached house in downtown Silver Spring.

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

The Planning Board finds the Project Plan assembles parts of two lots to allow for the unified redevelopment of the currently underutilized use of the Property as a surface parking lot. The Board also finds the Project Plan promotes the Sector Plan's goal to encourage housing as an important component to the revitalization efforts for downtown Silver Spring and does recommend a residential zone for the property. Finally, the Board finds the Project Plan introduces market-rate condo units into an existing framework of commercial and retail use in downtown Silver Spring, further encouraging revitalization in the downtown core.

*(8) The Application complies with Development Standards of the CBD-R2 Zone*

The Board finds that the Project Plan, subject to the conditions listed below, conforms to the development standards for the Optional Method of Development as set forth in Section 59-C-6.23 of the Zoning Ordinance and hereby adopts the Project Data Table as set forth below and as contained in the Staff Report.

<u>Development Standard</u>	<u>Permitted/Required</u>	<u>Proposed</u>
Gross Tract Area:	22,000 SF	28,423* SF
Net Site Area (after dedication)	N/A	21,523 SF
Permitted Density Calculations (du/ac.):		
Residential Apartments	200	243
	130	158**
MPDUs (%):	12.5%	15%
	20	24
Floor Area (du):		
Optional Method	N/A	170,000 SF
Building Height (ft.):	143	139
Parking:	N/A***	89****
Public Use Space (% of net lot area):		
On-Site	20% or 4,305 Sf	26.3% or 5,674 SF
Off-Site	N/A	20.3% or 4,363 SF
Total On and Off-Site Public Use Space	20%	46.6% or 10,037 SF

\* Includes previous dedication 5,150 SF for previous dedication and 1,750 SF for the proposed Fidler Lane right-of-way dedication.

\*\* The Applicant is receiving a 22% density bonus for providing 15% MPDUs.

\*\*\* The Project is within the Silver Spring Parking District and is not required to provide any parking on site.

\*\*\*\* The Project Plan proposes 89 parking spaces including 20 spaces that may be located under the Fidler Lane right-of-way (considered vault parking spaces). These vault parking spaces need approval from Montgomery County.

**(b) *The Application conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.***

As noted above, the Property is subject to the Silver Spring CBD and Vicinity Sector Plan, approved and adopted in February 2000 (previously defined as the "Sector Plan"). The Planning Board, after reviewing the Sector Plan and carefully evaluating the testimony and evidence of record, finds that the Project implements the major principles and recommendations of the Sector Plan, including providing housing in the CBD in close proximity to Metro, improving adjacent streetscapes and promoting the revitalization of the CBD.

First, while the Sector Plan does not specifically identify the Project as a potential housing site, the Sector Plan recommends a residential zone for the property, and, at pages 14-20 and 111-112, it encourages housing as an important component to the revitalization efforts. The Project achieves this Sector Plan goal for a residential downtown by providing a significant number of for-sale condominium units, including 24 MPDUs, in close proximity to Metro. The Project will also significantly further the objective of stabilizing the core's residential component, while providing an appropriate transition between the office uses and more intense commercial activity south and east of the Property to the predominately residential neighborhoods to the north and west of the Property.

Further, in accordance with the goals at page 22 for pedestrian friendly downtown of the Sector Plan, the Project includes a highly accessible new public open space with art work visible from the Metro, and proposes a street-facing building entrance that will contribute to active urban streets. The Project improves the quality of the pedestrian environment by providing the Silver Spring streetscape treatment along Fidler Lane and Ramsey Avenue and by creating a public plaza area along the front of the building, thereby promoting a pedestrian friendly downtown. The park will feature landscaping and shade trees, and street trees will be provided along Fidler Lane and Ramsey Avenue to promote a green downtown.

Finally, the Project is located less than a 5 minute walking distance from the Silver Spring Metro Station. The proximity to transit facilities and to the downtown employment core will reduce the dependency on the automobile for the residents of the development thereby promoting a transit oriented downtown in accordance with the goals of the Sector Plan.

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

The testimony and evidence in the record shows that the properties adjacent to and surrounding the Project include a mix of different uses, building heights and

massing. In particular, as Staff described in its testimony, building heights in the neighborhood or the Project ranged from 1-story to 17-stories, and the Cameron Hill community is currently surrounded on several sides by buildings significantly taller than their 3-story townhouses. Cameron Hill was developed as a Standard Method project that could have achieved a higher density under the Optional Method of Development. The Planning Board finds that the developer's decision to develop the Cameron Hill site as a standard method development does not provide a basis to restrict the Applicant's ability to develop the subject Property under the optional method as authorized by the County's Zoning Ordinance.

The one-story commercial restaurants on Ramsey Avenue and Cameron Street add to the mix of varying heights that is prevalent throughout many areas of the CBD, especially where 15 to 17-story residential and office buildings act as a backdrop to these restaurants.

The Planning Board acknowledges the testimony of nearby residents and the HOA regarding their concerns over the compatibility of the proposed high-rise building with their adjacent townhouses. However, the Board finds that the Project complies with all of the requirements of the CBD-R2 Zone, including the requirements for building heights and setbacks. The Board also finds persuasive the testimony of Staff that high-rise development adjacent to townhouses is not atypical in Silver Spring and that it is appropriate to locate high-rise residential buildings adjacent to townhouses in urban environments. Further, the Board finds persuasive shadow studies presented by the Applicant, which show there is minimal additional impact on the adjacent community as a direct result of the height of the proposed building. Finally, the Board finds the Project will improve the appearance of the Property and provide significant public amenities and improvements that will benefit the surrounding neighborhood.

The Planning Board accepts Applicant's proffer to provide certain architectural design and operational features and finds that the proffered features enhance the compatibility of the Project with the general neighborhood. Accordingly, the Board finds the Project will be compatible with and not detrimental to existing or potential development in the general neighborhood.

- (d) ***The Application would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.***

The Planning Board finds the Application will not overburden existing or proposed public facilities. First, the Board notes a traffic study, submitted to determine the impact of the Project on the local area transportation network,

shows that intersections were determined to operate within the congestions standard of 1800 Critical Lane Volume (CLV) for the Silver Spring CBD. In addition, the Property is located within the Silver Spring CBD Policy Area, which has a remaining capacity of 2,860 jobs and 4,448 housing units, as of May 31, 2004.

With respect to parking facilities, while the Planning Board acknowledges the concerns of nearby residents and business owners over the number of parking spaces proposed in the Project Plan, the Board finds the Property is located within the PLD and will be subject to the PLD tax and, therefore, pursuant to Section 59-E-5.2(a), the Applicant is not required to provide any parking spaces for the Project. The Applicant does propose, however, to provide 89 spaces on-site, of which 20 may be located in a parking vault under the Fidler Lane public right-of-way subject to approval by Montgomery County. Therefore, the Applicant proposes significantly more parking spaces on-site than are required by the Zoning Ordinance. Further, the Board finds persuasive the testimony and evidence presented by Staff and the Applicant's Traffic Expert, that the parking demand of both the residents of the Project and surrounding uses, including the nearby restaurants, the County Courthouse and Cameron Hill will be adequately met by public parking facilities in the PLD system, including the five garages within one-quarter mile of the Property. Finally, the Board notes that the Applicant is required, at Site Plan, to enter into a Traffic Mitigation Agreement in accordance with the provisions of the Silver Spring Traffic Management District set forth in Chapter 42A of the County Code. Accordingly, the Planning Board finds that the parking facilities will not be overburdened by the proposed development.

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

The Optional Method of Development permits a more efficient and desirable product than by using the Standard Method of Development. The Planning Board finds the Project Plan utilizes the Optional Method to maximize its gross floor area on-site to 170,000 SF and maximize the number of MPDUs to provide 15% on-site MPDU units, which would not have been possible under the Standard Method.

In addition to the provision of the maximum number of on-site MPDUs, the Project will include approximately 10,037 square feet of new on-site and off-site public use space (46% of the gross tract area of the Property), which would not have been possible through the Standard Method. Finally, the Projects adds an are amenity (i.e., a 16-foot tall hand-carved stone sculpture), which would not be provided under the standard method of development.



- (f) ***The Application will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.***

The Planning Board finds the Project Plan provides twenty-four (24) on-site MPDUs or 15% of the proposed residential dwelling units within the development. The Applicant is receiving a 22% density bonus for the additional on-site MPDUs.

- (g) ***The Application satisfies any applicable requirements for forest conservation under Chapter 22A.***

The Property is exempt from the forest conservation requirements.

- (h) ***The Application satisfies any applicable requirements for water quality resources protection under Chapter 19.***

The Board finds that the applicable provisions of Chapter 19 have been satisfied with the conditional approval from the Montgomery County Department of Permitting Services (DPS) for Stormwater Management, which was granted by letter dated July 8, 2004. Approval of final Stormwater Management is required prior to submittal of the Site Plan application.

## **VI. PLANNING BOARD ACTION**

Having considered all of the evidence presented, including the comments of the outside reviewing agencies, and all of the testimony taken, including that contained in the record of the Preliminary Plan, the Planning Board finds the Project Plan to be in accordance with the provisions of the Zoning Ordinance and the provisions of Article 28 of the Maryland Code Annotated; and, the Board further finds that the Project Plan is in substantial conformance with the applicable recommendations of the Sector Plan. Therefore, the Planning Board APPROVES the Project Plan, subject to the following Conditions:

### **1. Development Ceiling**

The Project shall be limited to 170,000 SF of residential development for a total of 158 condominium apartments units, including 24 MPDUs.

### **2. Building Height/Mass**

The height of the proposed building shall not exceed the maximum permitted height of 143 feet.

### **3. Transportation Improvements**

- a. The Applicant shall dedicate 30 feet from the centerline to provide for a total of 60 feet right-of-way for Fidler Lane as recommended in the Silver Spring CBD Sector Plan.
- b. Provide 20 feet of pavement to serve the garage with turnaround on Fidler Lane.
- c. Provide 17 feet of sidewalk (existing) on the south side and 15 feet of sidewalk on the north side of Fidler Lane.
- d. Provide standard Silver Spring streetscape along the property line on Fidler Lane, and extend the streetscape off-site on Fidler Lane and Ramsey Avenue across the property frontage of Lot 5 (Cubanos Restaurant).

### **4. Moderately Priced Dwelling Units (MPDUs)**

The Applicant shall provide 15% or 24 MPDUs on-site, consistent with the requirements of Chapter 25A. The Applicant is receiving a 22% density bonus for providing additional MPDUs on the site.

### **5. Public Use Space**

- a. The Applicant shall provide 26.3 percent of on-site public use space and 20.3 percent of off-site public use space.
- b. The proposed public use space must be easily and readily accessible to the general public and used for public enjoyment. All streetscape improvements shall be in accordance with the *Silver Spring Streetscape Plan (April 1992)* Technical Manual or as amended.

### **6. Streetscape**

- a. The Applicant shall provide the full streetscape improvements along the Fidler Lane frontage using the *Silver Spring Streetscape Plan (April 1992)* Technical Manual. The following elements are proposed: stone, precast concrete, brick pavers, street trees, lighting, and any other details that are necessary, including the undergrounding of utilities along the frontage of the property, to fulfill the Silver Spring streetscape standards.
- b. Off-site improvements shall be provided from the northeast property line of the subject Property, to the intersection with Ramsey Avenue in front of Lot 5 (currently Cubanos Restaurant), where adequate existing right-of-way exists.

The following elements for off-site improvements are proposed: brick pavers, lighting, and any other details that are necessary, including the undergrounding of utilities on the south side of Ramsey Avenue, to fulfill the Silver Spring streetscape standards.

## **7. Public Art**

- a. A Public Art Program shall be developed to include a 16-foot-tall, hand-carved stone sculpture in the form of a graceful "Arc" reaching skyward. This elegant structure acts as a marker for the outdoor public space, being created as a pocket park with this new building structure as a backdrop. The arc-form echoes the distinctive curved balconies that distinguish this building and will be clearly visible from the plaza in front of the Silver Spring Metro Station. This artwork follows in the tradition of minimalist sculpture where the beauty of the natural stone is brought out. The surface will be a thermal and bush-hammer finish with a semi-rough texture. The sculpture will be shaped by the artist's hand giving it a hand-wrought character. The park and sculpture will be softly lit in the evening to enhance the streetscape, inviting pedestrians and commuters to enjoy and relax.
- b. The public space will also feature six hand-carved benches made of cut stone. The plan-form of these benches will also reinforce the "Arc" concept of the sculpture. The tops of the benches will be sandblasted smooth to allow for comfortable seating. The paving will be designed with a curving pattern that compliments the sculpture and the benches.
- c. The art proposal for the Project shall be fully developed and reviewed by the Planning Board's Art Panel prior to Site Plan review.

## **8. Staging of Amenity Features**

- a. The Project shall be developed in one phase.
- b. Landscaping to be installed no later than the next growing season after completion of building and public plaza.
- c. Art work to be installed prior to occupancy of the building.

## **9. Maintenance and Management Organization**

Initially, the Applicant, and subsequently, within ninety days of formation, the Condominium Association shall become a member and enter into an agreement with the Silver Spring Urban District for the purpose of maintaining public open spaces and participating in community events.

**10. Coordination for Additional Approvals Required Prior to Site Plan Approvals**

The Applicant shall secure the following additional approvals prior to Site Plan Review:

- a. Coordinate with the Silver Spring Regional Service Center on the placement of the proposed way finding signs;
- b. Present the public art components to the Silver Spring CBD Art Review Panel for review and comment to be available to the Planning Board;
- c. Coordinate with the M-NCPPC staff and the Montgomery County Department of Public Works and Transportation (DPWT) staff regarding the final design and extent of the non-standard elements as part of the proposed streetscape improvements;
- d. The Applicant shall request a waiver for all non-standard elements and non-standard streetscape improvements as well as a maintenance and liability agreement with the DPWT;
- e. Enter into a maintenance agreement with the Silver Spring Urban District for maintenance of the streetscape improvements.

**11. The Applicant must incorporate the following architectural and operational elements into the Project Plan:**

- a. Relocate the fitness room from the rear of the building facing Cameron Hill to the front of the building.
- b. Eliminate the center tier of balconies on the rear of the building and convert the balconies to "Juliet" style openings.
- c. Construct the two remaining tiers of balconies with opaque glass screen railings.
- d. Utilize masonry materials on the exterior of the building
- e. Limit the hours of operation of the private amenity space in the back of the proposed building.

**12. If Cameron Hill HOA grants the Applicant the easements necessary to remove the existing fence and construct the new fence and the customary tie-back easements regularly required for the construction of below ground structures, then the Applicant must incorporate the following architectural and operational elements into the Project Plan:**

- a. Remove the existing wood fence and masonry wall on the Cameron Hill property at the shared property line and install a new fence constructed of wrought iron and masonry on the Property.
- b. Allow the Cameron Hill HOA use of the Portico community room for HOA meetings once per month.

**13. Prior to building permit, Applicant to enter into a Traffic Mitigation Agreement in accordance with the provisions of the Silver Spring Traffic Management District set forth in Chapter 42A of the County Code.**

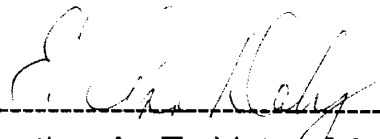
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

DYD 2/4/05

**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on **Thursday, February 10, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Wellington, seconded by Vice Chair Perdue, with Chairman Berlage, Vice Chair Perdue, and Commissioners Bryant, Robinson, and Wellington** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Project Plan No. 9-04003A, Portico, 1203 Fidler Lane.**



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Certification As To Vote of Adoption  
E. Ann Daly, Technical Writer