



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

MCPB No. 18-006  
Site Plan No. 82013005B  
Fenton Street  
Date of Hearing: February 1, 2018

FEB 07 2018

**RESOLUTION**

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on February 28, 2013, the Planning Board approved Site Plan No. 820130050 for 259 dwelling units with 12.5% MPDUs, 18,650 square feet of retail, and 29,228 square feet of institutional use (church) on 117,416 gross square feet (2.7 acres) of CBD-1, CBD 0.5, R-60, and Fenton Village Overlay zoned land located at the intersection of Wayne Avenue and Fenton Street in the 2000 Silver Spring Central Business District Sector Plan and 2000 North and West Silver Spring Master Plan ("Sector Plan") area; and

WHEREAS, on November 22, 2016, Fenton Development, LLC ("Applicant") filed an application for approval of an amendment to the previously approved site plan, designated Site Plan Amendment No. 82015005A, which was withdrawn; and

WHEREAS, on October 6, 2017, the Applicant filed a second application for approval of an amendment to the previously approved site plan to modify the multifamily and church building architecture, site design & landscaping, public art, and phase church construction; and

WHEREAS, Applicant's second application to amend the site plan was designated Site Plan No. 82015005B, Fenton Street ("Site Plan," "Amendment," 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

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Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

Planning Board dated January 19, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”);

WHEREAS, on February 1, 2018, 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, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 8201300B for changes to the approved multifamily and church building architecture, site design & landscaping, public art, and a new phased approach to the church construction. Except as amended by the conditions below, the conditions approved under Site Plan 820130050 remain valid and in full effect.<sup>1</sup>

**11. Public Art and Amenities**

- a. Provide and install the public art concept as recommended by the Art Review Panel in its letter, dated February 21, 2017, and illustrated on the Certified Site Plan.
- b. Any significant changes to the concept presented on January 18, 2017 must be presented to the Art Review Panel and approved by staff before Certified Site Plan.
- c. Significant changes to the concept, as determined by staff, proposed after the Certified Site Plan will require a Site Plan Amendment.
- d. The Applicant must provide a public elevator in the public use space between Wayne Avenue and Bonifant Street to ensure a continuous accessible route.

**14. Certified Site Plan**

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

- g. Add architectural articulation and embellishment for both the water meter shed and interim Church façade on Bonifant Street
- h. Request approval from MCDOT for an additional truck restriction sign on eastbound Bonifant Street to discourage truck traffic from entering the neighborhood.
- i. Add native landscape plantings within the Bonifant Street Chicane
- j. Update the development program to reflect the phased approach.

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<sup>1</sup> For these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- k. Revise the development program to address the timing of the remaining forest conservation requirements.
15. Consistent with the Planning Board's findings in approving Site Plan 820130050, the Applicant must underground all overhead utilities on the Wayne Avenue, Fenton Street, and Bonifant Street frontages prior to release of any associated bond for that work.
16. Prior to any further land disturbing activity, such as utility connection work, the fee-in-lieu payment addressing the additional 0.01 acre afforestation requirement must be submitted.

BE IT FURTHER RESOLVED that all other site plan conditions of approval for this project remain valid, unchanged and in full force and effect; and

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Fenton Street, Site Plan No. 82013005B submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, and all findings not specifically addressed remain in effect.*
2. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation.*

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD)

The original NRI/FSD, 420120030, was approved for the Project on September 15, 2011. The Subject Property is not associated with any forest or other environmentally sensitive resources such as highly erodible soils, steep slopes, streams, floodplains or related buffers. Furthermore, there are no known rare, threatened, or endangered species on or near the Site. However, there are a number of specimen trees which measure over 30" DBH located on and near the subject property (which are subject to a Forest Conservation Variance). The Subject Property is located within the Sligo Creek watershed, a Use I watershed.

#### Forest Conservation Plan

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The Application has a previous Final Forest Conservation Plan (FFCP) approval which was approved by the Board and ultimately certified by Staff on April 30, 2013. That FFCP included the removal of four variance trees and impacts to two other variance trees, affecting a total of six variance trees. The plans also generated an afforestation requirement of 0.40 acres which was addressed offsite by a payment of fee-in-lieu.

The current FFCP amendment is similar to the previous approval, except for expansions of the limits of disturbance (LOD) for various utility work, which has increased the net tract area and affected additional variance trees. Additionally, the plans more accurately reflect the locations of two variance trees on the south side of Bonifant Street. As a result of the expanded LOD and corrected tree locations, the Application's afforestation requirement is now 0.41 acres.

#### Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County 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.

This Application will require the removal or CRZ impact to four Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Protected Trees are all located in rights-of-way on opposite sides of the development. Furthermore, although the trees' CRZs are technically affected by the LOD as shown in the Application, few if any roots will actually be impacted by the proposed work.

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.*

The impacts are avoided/minimized to the greatest extent possible (little or no impacts will occur) and are largely associated with utility work 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 Variance is based on development allowed under the existing zoning and the need to achieve appropriate utility connections. The Variance can be granted under this condition if the impacts are avoided or minimized and that any necessary mitigation is provided. In this case, the impacts proposed are on the opposite side of the existing roadways where there would be few if any actual roots of the subject tree.

- 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 Variance is a result of the utility modifications in the ROW 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.*

Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality. Department of Permitting Services staff approved the storm water management concept for the Application. Additionally, the Subject Property is not directly associated with any streams, wetlands, or related buffers. There is also likely to be very little, if any, actual impact to the affected trees.

No mitigation is required for Protected Trees impacted but retained.

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

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 07 2018 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of

this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Patterson voting in favor, and Commissioner Cichy absent at its regular meeting held on Thursday, February 1, 2018, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board