



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

MCPB No. 19-042
Project Plan No. 92000002B
1 Discovery Place
Date of Hearing: April 25, 2019

MAY 01 2019

RESOLUTION

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

WHEREAS, under Section 59-D-2 of the Zoning Ordinance in effect on October 29, 2014, the Montgomery County Planning Board is authorized to review project plan applications; and

WHEREAS, on June 1, 2000, the Planning Board (Resolution mailed on August 31, 2000) approved Project Plan No. 920000020 for 478,898 square feet of commercial development on 3.5 acres of CBD-2 zoned-land, located within the triangle formed by Colesville Road, Georgia Avenue, and Wayne Avenue ("Subject Property"), in the Silver Spring Central Business District Sector Plan ("Sector Plan") area; and

WHEREAS, on July 19, 2001, the Planning Board approved an amendment to the previously approved project plan, designated Project Plan No. 92000002A (Resolution mailed July 23, 2001); and

WHEREAS, on December 26, 2018, CRE-FP Silver Spring JV, LLC ("Applicant") filed an application for approval of an amendment to the previously approved project plan to update the maximum density consistent with the original Site Plan Amendment 82000032A, increase total square footage from 545,429 square feet of office and child care uses to a total of 554,429 square feet of office and retail/restaurant uses (with no more than 8,000 square feet of retail/restaurant uses), redesign exterior space and reduce public use space from 83,785 square feet to 36,116 square feet, and make minor revisions to building design on the Subject Property; and

WHEREAS, Applicant's project plan application was designated Project Plan No. 92000002B, 1 Discovery Place ("Application" or "Project Plan"); and

Approved as to
Legal Sufficiency:

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 April 12, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 25, 2019, 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 Project Plan No. 92000002B to update the maximum density consistent with the original Site Plan Amendment 82000032A, increase total square footage from 545,429 square feet of office and child care uses to a total of 554,429 square feet of office and retail/restaurant uses (with no more than 8,000 square feet of retail/restaurant uses), redesign exterior space and reduce public use space from 83,785 square feet to 36,116 square feet, and make minor revisions to building design by the following conditions which supersede the previously approved conditions in their entirety¹:

1. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its stormwater management concept letter dated March 20, 2019 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
2. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 27, 2019, 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 MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

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.

BE IT FURTHER RESOLVED that all elements shown on the latest electronic version of 92000002B, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, 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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

(d) The development does not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located in a transportation management district designated under Chapter 42A, is subject to a traffic mitigation agreement that meets all the applicable requirements.

Transportation

The Amendment will not overburden existing transportation public facilities. Since at least 75% of the development has existed for more than 12 years, only the increase in density is subject to adequate public facilities review associated with the Project Plan Amendment. The traffic generated by the Amendment was evaluated, including an increase of up to 9,000 square feet of additional office, or 1,000 square feet of office and up to 8,000 square feet of retail uses. As illustrated in Table 1, below, the Amendment is anticipated to generate 13 net new morning peak hour person trips and 13 net new evening peak hour person trips. Site-generated traffic will be lower if the additional 8,000 square feet is allocated to ancillary retail uses, rather than office uses, because the size and character of the ancillary retail use does not generate additional peak hour person trips under the 2017 Local Area Transportation Review (LATR) Guidelines.

Table 1: Project Peak Hour Trip Generation

Existing	Vehicle Rates		Adjusted Vehicle Rates		Person Trips	
	AM	PM	AM	PM	AM	PM

545,429 SF General Office	633	627	411	407	829	822
Existing Trips	633	627	411	407	829	822
Proposed						
	AM	PM	AM	PM	AM	PM
546,429 SF General Office	634	628	412	408	830	823
8,000 SF General Office/ Ancillary						
Retail ¹	9	9	6	6	12	12
554,429 SF General Office	643	637	418	414	842	835
Proposed Trips	643	637	418	414	842	835
Net New Trips	10	10	7	7	13	13

¹ The Amendment will add up to 9,000 square feet of general office uses to the site, or 1,000 square feet of office and up to 8,000 square feet of ancillary retail uses. If retail uses are provided, no parking may be provided on-site to serve the ancillary retail. Source: M-NCPPC staff, March 19, 2019.

A traffic mitigation agreement was previously recorded subsequent to the original Project Plan and Site Plan approval. MCDOT will require the Applicant to transfer responsibilities of the TMAg from Discovery to Silver Spring Owner, LLC prior to certification of related Site Plan Amendment 82000032D.

(h) Any applicable requirements for forest conservation under Chapter 22A.

The FFCP amendment updates the previously approved plan to reflect the new grading and design as shown on the Site Plan Amendment. The only major change is the Applicant has elected to take the previously approved landscaping credit for afforestation purposes offsite via fee-in-lieu. This allows for maximum onsite flexibility when updating and maintaining onsite landscaping and will not affect the forest conservation requirements.

The afforestation requirements will be satisfied by a fee-in lieu payment or purchase of equivalent credits in a forest bank. Staff has recommended conditions of approval addressing the forest conservation requirements.

Forest Conservation Variance

There are significant, and specimen sized street trees located adjacent to the site on the Wayne Avenue frontage, and the proposed Limits of Disturbance (LOD) are within the critical root zone of these street trees. 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 or disturbance within the tree's critical root zone (CRZ), requires a variance. A variance request 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. The affected resources that have been identified on the current Plan include trees with a DBH of 30 inches or greater. The Applicant submitted the variance request on March 7, 2019, for the impacts to subject trees. The Applicants' request is to impact (but retain) two trees under Section 22A-12(b) (3) of the County Forest Conservation Law.

Table 2: Variance Tree Impacts

No.	Common Name	Scientific Name	DBH (inches)	% impact	Condition Rating
1*	Willow oak	Quercus phellos	33	12	Good
4*	Willow oak	Quercus phellos	31	31	Good

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, Staff has determined that the Applicant (as conditioned) has demonstrated that enforcement of the variance provision would result in an unwarranted hardship for the following reasons:

Multiple design meetings between the Project Team and Park and Planning have occurred where the reconstruction of the public plaza has been discussed and modified to achieve urban planning objectives. These objectives resulted in additional construction closer to the specimen trees than previously anticipated. The subject trees are impacted by existing and proposed sidewalk, bikeways, and pedestrian facilities. Not granting the variance is an unwarranted hardship and would not allow for the redevelopment of this Site.

Staff has reviewed this Application and based on the existing circumstances and conditions on the Property, Staff agrees that there is an unwarranted hardship.

Variance Findings

Staff has made the following determination based on the required findings that granting the requested variance:

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

The impacts have been avoided/minimized to the greatest extent possible and are generally associated with modernizing urban sites. 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 actions by the Applicant;*

The requested variance is based on proposed development allowed under the existing zoning and the need to achieve modernization of the existing development and improvements to the Green Trail.

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 the result of modernization and improvements that are included within the net tract area of this project and not as of 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. The subject area is not directly associated with any streams, wetlands or related buffers. The DPS review and ultimate approval of the sediment and erosion control and storm water management plans will ensure that appropriate standards are met. Additionally, the mitigation plantings will contribute to these goals.

Mitigation for Trees Subject to the Variance

There are no Variance trees proposed for removal in association with the project. Staff does not recommend mitigation plantings for variance trees that are not removed, therefore no mitigation was requested by Staff for the impacted trees.

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

Stormwater Management (SWM)

The Montgomery County Department of Environmental Protection (MCDEP) developed a Countywide Stream Protection Strategy (CSPS) in 1998. The goal is to preserve, protect, and restore impaired watersheds. The proposed overall development will contribute to MCDEP's goals by implementing stormwater management treatment, reducing impervious cover, and increasing tree cover and landscape areas, which help slow down and infiltrate stormwater runoff.

The Site Plan received approval of a stormwater management concept plan on March 20, 2019. The Application will meet stormwater management goals by providing onsite micro-bioretenment.

- (j) *Any public use space is consistent with the goals of the Sector Plan and serves the public interest.*

The Planning Board previously approved 83,785 square feet of public use space with the original Project Plan, which included all exterior areas of the Property including sidewalks on all frontages. This amendment redesigns the open space to remain publicly accessible throughout, however certain areas of the open space are not counted towards public use space given their location relative to the interior of the site. Therefore, the public use space has been reduced to 36,116 square feet, or 23% of the site, to be more consistent with the intent of the Zoning Ordinance and goals of the Silver Spring Central Business District Plan. Section 59-A-2.1 of the Zoning Ordinance defines public use space as space devoted to public enjoyment such as green areas, gardens, plazas, etc. The Sector Plan calls for this space to be integrated with the Transit Center's open space, visible and easily accessible from surrounding streets, landscaped with shade trees, grassy and paved areas, include a central focal point, activated by ground floor retail and pedestrian routes, and sized to accommodate a variety of community activities. The Amendment redesigns this space to draw users of the existing pedestrian accessway and Green Trail into the site and provides three main spaces for public use enjoyment. The gathering spot, central plaza and garden park provide many of the elements described in the Sector Plan such as a focal feature, shade trees, and space to accommodate community activities. Additionally, the Amendment converts an existing 5,600 square foot public use space in the existing lobby at the Georgia Ave and Wayne Ave intersection into potential retail, restaurant, or office space to achieve an activated ground floor use. As designed, the decrease in public use space, which still exceeds the 20% minimum zoning requirement, better achieves the intent of the Sector Plan.

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 MAY 01 2019 (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 Commissioner Cichy, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board