



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

MCPB No. 19-043  
Site Plan No. 82000032D  
1 Discovery Place  
Date of Hearing: April 25, 2019

**MAY 01 2019**

**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 June 1, 2000, the Planning Board (Resolution mailed on August 31, 2000) approved Site Plan No. 820000320 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, the Planning Board administratively approved an amendment to the previously approved site plan, designated Site Plan No. 82000032A (Resolution not mailed), to allow an increase of 66,531 square feet of commercial area for a total of 545,429 square feet on the Subject Property; and

WHEREAS, on April 3, 2008, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 82000032A (MCPB No. 08-38), to allow the conversion of 9,296 square feet of office space within the existing building into a child day care center, convert 4,500 square feet of existing garden into a playground, and update the Forest Conservation Plan on the Subject Property; and

WHEREAS, on October 20, 2008, the Planning Director approved an amendment to the previously approved site plan, designated Site Plan No. 82000032B, to allow the installation of various exterior site elements and update the planting plan on the Subject Property; and

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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

WHEREAS, on February 10, 2011, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 82000032C (MCPB No. 11-10), to reduce the amount of public use space and relocate plant material for installation of a security fence and interior security retrofits on the Subject Property; 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 site 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 application to amend the site plan was designated Site Plan No. 82000032D, 1 Discovery Place (“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 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 Site Plan No. 82000032D 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 entirety<sup>1</sup>:

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<sup>1</sup> 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.

1. Public Use Space

- a. The Applicant must provide on-site a minimum of 36,116 square feet of public use space (23.7% of net lot area).
- b. Before issuance of final Use and Occupancy Certificate for the commercial development, all public use space areas on the Subject Property must be completed.

2. Public Art

The previously approved and existing public art mural located along Colesville Road must remain. Any proposed modification or removal of the mural will require review by the Public Art Panel and a Site Plan amendment.

3. Lighting

- a. Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b. All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c. Deflectors will be installed on proposed new fixtures to prevent excess illumination and glare.
- d. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

4. Landscaping

- a. Prior to issuance of final Use and Occupancy Certificate, all on-site amenities, including, but not limited to: lights, sidewalks/ pedestrian pathway, hardscape, benches, trash receptacles, bicycle facilities, recreation amenities, and rooftop amenities must be installed.
- b. The Applicant must install landscaping no later than the next growing season after completion of site work.

5. Forest Conservation

Before issuance of an associated Sediment Control Permit, the Applicant must pay a fee-in-lieu to satisfy the equivalent credits of 0.52 acres as established with the Final Forest Conservation Plan for this Site Plan.

6. Pedestrian & Bicycle Circulation

- a. The Applicant must provide a minimum of 19 long-term and 3 short-term bicycle parking spaces.

- b. The long-term spaces must be in a secured, well-lit bicycle room within the parking garage, and the short-term spaces must be inverted-U racks (or approved equal) installed in a location convenient to the main entrance (weather-protected preferred). The specific location of the short-term bicycle racks must be identified on the Certified Site Plan.

7. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated March 21, 2019, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.

8. Department of Permitting Services-Right-of-Way

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated March 8, 2019 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in its memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

9. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b. The cost estimate must include applicable Site Plan elements, including, but not limited to bicycle parking facilities, plant material, on-site lighting, site furniture and hardscape, retaining walls, fences, railings, private utilities, paths and other associated improvements of development, including sidewalks, and storm drainage facilities. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will

be followed by a Site Plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

**10. Development Program**

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

**11. Certified Site Plan**

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

- a. Revise Landscape Plans to provide two additional benches along the Wayne Avenue frontage.
- b. Provide details of proposed focal feature at the intersection of Wayne Ave and Georgia Ave.
- c. Revise bicycle parking counts to enumerate number of parking spaces to be provided in the proposed bicycle room as well as short-term parking as shown on Site Plan.
- d. Include the stormwater management concept approval letter, development program, and Site Plan resolution and other applicable resolutions on the approval or cover sheet(s).
- e. Add a note stating that "Minor modifications to the limits of disturbance shown on the Site Plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- f. Modify data table to reflect development standards approved by the Planning Board.
- g. Ensure consistency of all details and layout between Site and Landscape plans.

**BE IT FURTHER RESOLVED** that all site development elements shown on the latest electronic version of 82000032D, 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 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:

*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.*

*The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved Project Plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the Project Plan.*

The Applicant submitted a Project Plan Amendment concurrent with the Site Plan Amendment. Site Plan Amendment 82000032D is consistent with Project Plan Amendment 92000002B which allows an increase in 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), a redesign of exterior space and reduction of public use space from 83,785 square feet to 36,116 square feet, and to make minor revisions to building design.

- 3. The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

The Site Plan Amendment will enhance the existing circulation systems by providing two additional pedestrian access points as well as an extended vehicular drive, which facilitates a new fire access point to the building. The pedestrian and vehicular circulation system amendments are adequate, safe, and efficient.

- 5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

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 of 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**

<b>No.</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>DBH (inches)</b>	<b>% impact</b>	<b>Condition Rating</b>
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 determinations based on the required findings that the granting of 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. The variance can be granted.

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.



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-bioretenion.

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 ~~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).

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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, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board