



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

MCPB No. 19-038  
Preliminary Plan No. 120190090  
850 Sligo Avenue  
Date of Hearing: March 28, 2019

**MAY 15 2019**

**RESOLUTION**

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

WHEREAS, on November 8, 2018, Moonlight, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on approximately 19,401 square feet or 0.45 acres on a tract measuring 0.63 acres of CR 3.0 C 2.0 R 2.75 H 60T zoned-land, located on southeast quadrant of the intersection of Fenton Street and Sligo Avenue ("Subject Property"), in the Silver Spring CBD Policy Area and 2000 *Silver Spring Central Business District Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120190090, 850 Sligo Avenue ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 15, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 28, 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, on March 28, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by commissioner Patterson, with a vote of 4-0; Commissioners Anderson, Cichy, Dreyfuss, and Patterson voting in favor, and Commissioner Fani-Gonzalez absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120190090 to create 1 lot on the Subject Property, subject to the

following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to 1 lot for up to 85 age-restricted multi-family residential dwelling units and up to 6,912 square feet of non-residential uses.
2. Prior to record plat, the Applicant must record a covenant in the Land Records of Montgomery County restricting the multi-family units to residents aged 55 and over. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel, and its book and page must be shown on the record plat.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter, dated March 15, 2019, except conditions 5, 6, and 7.a.2, as they pertain to the undergrounding of utilities on Sligo Avenue, 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.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Applicant must dedicate right-of-way, as shown on the Certified Preliminary Plan, necessary to accommodate the Sector Plan recommended 40-foot wide right-of-way between the Subject Property line and Sligo Avenue right-of-way, except where 40 feet of right-of-way cannot be achieved due to the location of the existing office tower.
6. The record plat must show necessary easements.
7. Prior to recordation of any plat, Site Plan No. 820190050 must be certified by Staff.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated February 11, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Certified Preliminary Plan must contain the following note:  
  
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking,

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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.

site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

10. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Resolution.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The layout of the subdivision, including size, width, shape, orientation and diversity of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The lot size, width, shape and orientation are appropriate for the location of the subdivision considering the recommendations in the 2000 *Silver Spring Sector Plan* and the type of development and use contemplated. As described in the Staff Report, the lot was reviewed under and found to be in compliance with the dimensional requirements for the CR zone as specified in the Zoning Ordinance.

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan.*

The Subject Property is within the Fenton Village Overlay Zone (FVO) portion of the Silver Spring CBD. While there is flexibility in the type of development permitted in this area, the FVO is in place to ensure that new development is compatible with nearby uses. More specifically, the FVO encourages a mix of housing and commercial uses but limits building heights to ensure compatibility with adjacent residential neighborhoods. Open space can be transferred off-site in the same district.

Although the Sector Plan calls to retain the CBD-1 Zone, the Subject Property was rezoned through the Zoning Ordinance rewrite to CR 3.0 C 2.0 R 2.75 H 60T, effective October 31, 2014. The intent of the CBD-1 zoning was to encourage redevelopment within the CBD by allowing more commercial density in response to the current market (in 2000), but also provide the flexibility for both commercial or residential high-rises, or mixed-use projects. The Application will be a mixed-use, mid-rise residential development with ground-floor non-

residential uses under the optional method of development, which satisfies the intent of the CBD-1 Zone and the current CR Zone.

#### Urban Design Recommendations

The Sector Plan provides general urban design recommendations for redevelopment projects in the Fenton Village Overlay Zone as well as the following specific recommendations:

- *Examine the potential for housing in Fenton Village Overlay zone, particularly in the transition area between the commercial and residential areas.*

This project satisfies the recommendation of adding housing within the FVO and provides a transition between the higher heights and densities of the Silver Spring CBD and adjacent residential neighborhood.

- *Upgrade the physical appearance of Fenton Street through streetscaping, landscaped parking lots, infill development that helps define the street.*

The Application will revitalize an existing vacant office building and surface parking lot into a vibrant mixed-use, predominantly residential, project. The new building will be located directly along the street edge at Fenton Street, Gist Avenue, and Sligo Avenue and will improve the sidewalk and streetscape improvements, including undergrounding utilities along the site's Gist Avenue frontage, including the utility pole on the corner of Gist Avenue and Fenton Street, in accordance with the Sector Plan recommendations.

- *Limit building height on the east side of Fenton Street to 60 feet for buildings with residential uses. Projects proposed along the east side of Fenton Street should make a transition between the commercial district and the adjacent single-family homes, creating compatibility through height changes, siting, and green, landscaped buffers.*

The new building will step down the maximum height, from Fenton Street toward the existing single-family homes, and will add a landscaped buffer along the eastern side of the Subject Property to further improve the transition to the single-family neighborhood. The existing building to be reused is grandfathered at its current height.

#### General Recommendations

The Sector Plan envisions Silver Spring as a place that invites revitalization. The Sector Plan outlines six themes under which that vision can be achieved: transit-oriented downtown, commercial

downtown, residential downtown, green downtown, civic downtown and pedestrian-friendly downtown. Each of these themes is intended to guide new development within the Silver Spring CBD and is discussed specifically below:

*Transit-Oriented Downtown*

The Subject Property is located on the east side of Fenton Street between Sligo Avenue and Gist Avenue and is a gateway into the CBD from points south and east. The Sector Plan's transit-oriented downtown theme strives to balance the needs of both commuter and local traffic and of walkers and drivers to maximize the investment in Silver Spring's transit infrastructure through both transportation improvements and land use efforts. The Plan further states that transportation options should link transit and non-motorized forms of transportation. The Subject Property is ½ mile from the Silver Spring Transit Center and the future Purple Line station at the Silver Spring Library and is currently served by Metrobus, RideOn, the VanGo Circulator, and Capital Bikeshare.

*Commercial Downtown*

Commercial activity, a mutually supportive mix of office, stores, and other business enterprises, is the defining feature of a successful downtown. The Preliminary plan may include a ground floor commercial component, of up to 6,912 square feet, if market conditions are favorable.

*Residential Downtown*

The Sector Plan's residential downtown theme seeks to create a mix of housing choices supported by parks, shopping, cultural, civic and employment uses with transit. "A green and pedestrian-friendly downtown will create parks, plazas, and streets of a desirable residential community." The Application will provide up to 85 age-restricted multi-family dwelling units with 12.5% MPDUs.

*Green Downtown*

The green downtown theme of the Sector Plan envisions shaded, tree-lined streets and well-placed green parks and plazas, creating a comprehensive system of open spaces that provide economic, environmental and aesthetic benefits throughout downtown. The Sector Plan states "Landscaped plazas are incorporated into building and site design to create visual and physical respite, to create formal and informal gathering places, and to complement street and building design." Pursuant to the Application and associated site plan, the streetscape along Fenton Street, Sligo Avenue, and Gist Avenue will be

upgraded with street trees, paving, and lighting to improve the pedestrian experience and overall appearance of the public realm.

*Civic Downtown*

The civic downtown theme envisions formal or informal, large or small, public or private civic spaces, where people meet, cross paths and gather. The Preliminary Plan will accommodate a public open space immediately adjacent to the project in the Gist Avenue right-of-way, in the form of a small yet effective gathering space, providing a unique civic space that will add to the variety of open spaces in Silver Spring.

*Pedestrian-Friendly Downtown*

The pedestrian-friendly downtown theme of the Sector Plan encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. The Sector Plan states “An urban area’s greatest economic asset, and strongest physical definition comes from its pedestrian environment.”

The Preliminary Plan will provide age-restricted housing within walking distance to retail, restaurant, and office uses. This proximity to existing and civic and commercial uses will promote pedestrian activity and street activation. The proposed building placement also enhances the pedestrian environment by locating the buildings directly along the street edge to create a continuous building line and define the pedestrian environment.

As conditioned, the Application is consistent with the six themes identified in the 2000 *Silver Spring CBD Sector Plan*.

Circulation Systems Recommendations

The Sector Plan recommends creating a system of trails and bike routes, implementing streetscape improvements to create a safe and pleasant pedestrian environment, and where appropriate, reuse public parking facilities, and to make circulation improvements to local roads. This vision was recently updated through the 2018 Bicycle Master Plan, which recommends a separated bike network within the Silver Spring CBD. The project respects the master plan recommended bicycle lanes on Fenton Street by providing adequate right-of-way for their future implementation. As of the date of this staff report, MCDOT anticipates the Fenton Street bicycle lanes to be implemented on the west (opposite) side of the street and directed the applicant not to construct the bike lanes at this time.

The Application will provide streetscape improvements along Fenton Street Sligo Avenue, and Gist Avenue, which will create an inviting pedestrian

environment that will activate the street and support the ground-floor retail included as part of the Project. As conditioned, the Application conforms to the Sector Plan recommendations for Circulation Systems.

#### Housing Recommendations

The housing objective of the Sector Plan is to develop new residential projects to provide housing and encourage maintenance of existing housing, creating Silver Spring as an even more desirable residential market. The recommendations include:

- provide housing choice and market-feasible development options, including apartments and townhouses;
- rezone CBD properties to encourage residential development; and
- convert selected public-sector surface parking lots to housing.

Although the Subject Property is not identified in the Sector Plan as a potential housing site, the Application promotes the housing choice goal by providing age-restricted housing. The additional housing provided by the Application will facilitate the availability of new housing in a range of types and rents within walking distance of transit.

In conformance with the objectives of the Sector Plan, the additional residential development will activate the urban environment and contribute to the creation of a "thriving downtown residential community." Additionally, as discussed above, the building has been designed to promote compatibility with the surrounding single-family residential homes and will create an approachable residential urban scale.

The Preliminary Plan substantially conforms to the 2000 *Silver Spring Sector Plan*. The Preliminary Plan complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The Site is not subject to an Urban Renewal Plan.

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

Pedestrian and bicycle access to the Subject Property is proposed directly from sidewalks along Fenton Street, Sligo Avenue, and Gist Avenue. Bicycle access will be enhanced on Fenton Street upon completion of the MCDOT separated bicycle lanes project, discussed below. The Subject Project does not preclude installation of the Fenton Street bicycle lanes, which are anticipated to be constructed by MCDOT on the opposite (southbound) side of Fenton Street.

Vehicular access to the Subject Property is proposed via Gist Avenue and Sligo Avenue, which will operate in the following configuration: loading and service access will occur via the Sligo Avenue access point and residential garage access will be provided via a driveway on Gist Avenue. As conditioned, the Gist Avenue access point will be constructed to direct outbound site traffic toward Fenton Street.

*Master Plan Roadways and Pedestrian / Bikeway Facilities*

The 2000 *Silver Spring CBD Sector Plan*, the 2013 *Countywide Transit Corridors Functional Master Plan*, the 2018 *Bicycle Master Plan* and 2018 *Master Plan of Highways and Transitways* recommend the following master plan facilities along property frontage:

1. Sligo Avenue, along the northern frontage, as a business district roadway with a minimum right-of-way width of 80' (40' from the center line).
2. Fenton Street, along the western frontage, as an arterial with a minimum right-of-way width of 80' (40' from centerline); a separated bikeway.
3. Gist Avenue, along the southern frontage, as a shared roadway.

*Sector-Planned Transportation Demand Management*

As a project within the Silver Spring Transportation Management District (TMD), the development is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Silver Spring TMD. The specific criterion requiring a TMAg is 25 or more employees or more than 100 dwelling units.

*Adequate Public Facilities*

A transportation exemption statement, dated December 21, 2018, satisfied the Local Area Transportation Review for the Subject Application because the Project generates fewer than 50 net new peak hour person trips. When compared to the existing office use, the proposed development is estimated to generate a net reduction of 51 morning peak-hour person trips (25 fewer vehicle trips) and 18 fewer evening peak-hour person trips.

**School Adequacy**

The Subject Preliminary Plan proposes up to 85 age-restricted multifamily units. Based on the 2016-2020 Subdivision Staging Policy, the moratorium currently affecting the Montgomery Blair High School Cluster does not apply to the approval of age-restricted units. Therefore, the annual schools test does not apply. Should the Applicant wish to remove the "age-restricted" designation for any or all of the units covered by this subdivision, they must submit an application to amend this approval, which will trigger a new schools adequacy review.

**Other Public Facilities**



Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied.*

### **Environment**

#### *Forest Conservation*

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(s)(2) because the proposed activity occurs on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet. This exemption was confirmed through 42018103E on December 29, 2017.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) on February 11, 2019 (Attachment C). The Project proposes to meet stormwater management requirements through the use of a green roof and micro-bioretenion. MCDPS granted the project a partial waiver for quality requirements and a full waiver for quantity requirements based on site constraints.

6. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

The Applicant requested to have the exterior noise guidelines waived, under Section 2.2.2 of the 1983 Noise Guidelines, due to the nature of the urban downtown. The Project proposes outdoor open space offsite within the right-of-way adjacent to Gist Avenue and Fenton Street and measures to mitigate noise within the streetscape would be detrimental to good urban design principles. As a result, some noise will be inevitable. Construction methods and materials on the proposed building will be subject to conditions designed to attenuate noise in interior spaces. The Planning Board approves the waiver.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed.

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 15 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 Cichy, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent 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