



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

MCPB No. 19-120  
Site Plan No. 82019005A  
850 Sligo Avenue  
Date of Hearing: October 10, 2019

OCT 16 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, on November 8, 2018, Moonlight, Inc. ("Applicant") filed an application for approval of a site plan for a mixed-use building of up to 82,941 square feet of development consisting of up to 76,029 square feet of residential development (up to 85 multifamily dwelling units), including a minimum of 12.5% MPDUs, and up to 6,912 square feet of non-residential development on 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

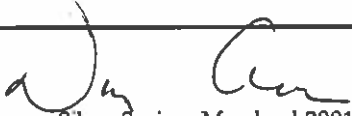
WHEREAS, on August 1, 2019, Moonlight, Inc. ("Applicant") filed an application for approval of an amendment to the previously approved site plan to remove the age-restricted use from the multifamily component of the project on the Subject Property; and

WHEREAS, the application to amend the site plan was designated Site Plan No. 82019005A, 850 Sligo Avenue ("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 September 26, 2019, setting forth its analysis of, and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 10, 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

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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, 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. 82019005A for removing the age-restricted use from the multifamily component of the project by modifying condition number 1, as follows, and deleting condition number 3.a:<sup>1</sup>

1. Density

The Site Plan is limited to a maximum of up to 82,941 square feet of total development comprised of up to 76,029 square feet of residential uses with up to 85 multifamily residential dwelling units, including 12.5% MPDUs, and up to 6,912 square feet of non-residential development.

2. Height

New construction on the Subject Property is limited to a maximum height of 60 feet, as measured from the building height measuring point illustrated on the Certified Site Plan. Existing structures being retained are limited to their existing height.

3. Age Restricted Occupancy Provisions

This condition is deleted in its entirety.

4. Moderately Priced Dwelling Units (MPDUs)

The Planning Board accepts the recommendations of Montgomery County Department of Housing and Community Affairs (DHCA) in its letter dated February 14, 2019 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a. The development must provide 12.5 percent MPDUs or MCDHCA-approved equivalent consistent with the requirements of Chapter 25A and the applicable Master Plan.
- b. Before issuance of any building permit for any residential unit(s), the MPDU agreement to build between the Applicant and the MCDHCA must be executed.

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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.

5. Public Open Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 970 square feet of public open space (5% of site area) off-site, as shown on the Certified Site Plan.
- b. Except as specified herein, prior to the final use and occupancy permit, the Applicant must construct streetscape improvements along the property's frontage on Fenton Street, Sligo Avenue, and Gist Avenue, consistent with the Silver Spring CBD Streetscape Standards. The Applicant must underground utilities on the property's Gist Avenue frontage, including the utility pole at the corner of Fenton Street and Gist Avenue, as shown on the Certified Site Plan.
- c. Before the issuance of the final use and occupancy certificates for the residential development, all public open space areas provided off-site must be completed and accepted by the Montgomery County Department of Transportation.
- d. If the Montgomery County Department of Transportation modifies the area of right-of-way used for public open space in a manner inconsistent with the definition of public open space, the Applicant must pay \$154,890 dollars to M-NCPPC in accordance with 59.6.3.6.C. or seek a site plan amendment to reflect an alternative location to construct public open space improvements.

6. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the *CR Zone Incentive Density Implementation Guidelines* for each one.

- a. Transit Proximity – The Subject Property is located within a ½ mile of the Silver Spring Metrorail station
- b. Connectivity between Uses, Activities, and Mobility Options
  - i. Minimum Parking – The Application must provide no more than 29 parking spaces for the residential use and 0 parking spaces for the ancillary retail use.
- c. Quality Building and Site Design
  - i. Architectural Elevations –The exterior architectural elements must be substantially similar to architectural elevations shown on the Certified Site Plan, as determined by Staff.
  - ii. The Applicant must provide and maintain a mural, architectural feature, or comparable visual amenity that breaks up the mass of the tower element of the existing building (to remain). This visual amenity must be installed prior to the final Use and Occupancy permit and may change over time without amending the Site Plan.
  - iii. Exceptional Design –The Applicant must construct the building in a manner substantially similar to the building shown on the Certified Site Plan, as determined by Staff.

- iv. Structured Parking –The Applicant must provide all required on-site parking spaces within the parking structure.
- d. Protection and Enhancement of the Natural Environment
  - i. Building Lot Terminations (BLTs) – Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 0.1646 BLTs to the MCDPS.
  - ii. Cool Roof – The Applicant must provide a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12.
- e. Building Reuse –The Application will adaptively reuse a minimum of 75% of the vacant existing office building and will utilize an architectural deconstruction company to remove reusable and recyclable materials before any demolition, if applicable.

7. Recreation Facilities

Before Certified Site Plan approval, the Applicant must demonstrate substantial conformance with the M-NCPPC Recreation Guidelines.

8. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to: internal walks, public open space, and streetscape, as shown on the Certified Site Plan.

9. 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 on-site 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 on-site down-lights must have full cut-off, or BUG-equivalent, fixtures.
- c. Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.
- d. Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting residentially developed properties.
- e. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.
- f. On the rooftop of the building, the light pole height must not exceed the height illustrated on the Certified Site Plan.

10. Landscaping

- a. Ensure consistency between the landscaping plans (planting beds, open space, etc.) and site plans.
- b. The Applicant must install landscaping no later than the next growing season after completion of site work.

11. Noise Attenuation

- a. Before issuance of the any building permit, the Applicant must provide certification to Staff from an engineer who specializes in acoustical treatment that the building shell for residential dwelling units affected by exterior noise levels projected above 65 or 55 (based on map in guidelines) dBA Ldn will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b. If the plan changes in any manner that affects the validity of the noise analysis for acoustical certifications and noise attenuation features, the Applicant must conduct a new noise analysis to reflect the revised plans, and new noise attenuation features may be required.
- c. Before issuance of any Use and Occupancy Certificate for residents, the Applicant must certify that the noise impacted units have been constructed in accordance with the certification of an engineer that specializes in acoustical treatments.

12. Transportation

- a. Before the release of any building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Silver Spring Transportation Management District (TMD).
- b. The Subject Property's Gist Avenue access point must be constructed to restrict site-generated trips to "left-in/ right-out" maneuvers to direct traffic toward Fenton Street.

13. Pedestrian & Bicycle Circulation

- a. The Applicant must provide 42 long-term and 2 short-term bicycle parking spaces.
- b. The long-term spaces must be in a secured, well-lit bicycle room within the garage, and the short-term spaces must be inverted-U racks (or approved equal) installed along the building's main retail and residential entrances (weather protected preferred). The specific location(s) of the bicycle parking must be identified on the Certified Site Plan.

14. 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 January 30, 2019 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in their memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

15. 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 October 9, 2018, 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.

16. 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 59.7.3.4.K.4 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 plant material, on-site lighting, the tower element visual amenity, offsite public open space payment set forth in Site Plan Condition #5.d., indoor and outdoor recreational facilities, site furniture, trash enclosures, retaining walls, railings, private utilities, paths and associated improvements of development, including sidewalks, storm drainage facilities, street trees, and street lights. The surety must be posted before issuance of the any building permit of development and will be tied to the development program.

17. 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.

18. 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. Include the stormwater management concept approval letter, development program, Sketch Plan resolution, Preliminary Plan resolution, and Site Plan resolution on the approval or cover sheet(s).
- b. 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."
- c. Modify data table to reflect development standards approved by the Planning Board.

19. Construction Management

Prior to Certified Site Plan, the Applicant must develop a construction management plan to minimize construction impacts on adjacent homes, including orienting lighting onto the Subject Property and utilizing fabric wrapped perimeter fencing for dust control.

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

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of 82019005A, 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:

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.*
4. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*
  - i. *Division 4.5. Commercial/Residential Zones*

Development Standards

The Subject Property is approximately 27,647 square feet or 0.63 acres, zoned CR 3.0 C 2.0 R 2.75 H 60T. The following Data Table shows the Application's conformance to the development standards of the zone.

<b>Data Table – Table 1</b>			
<b>Section 59.4</b>	<b>Development Standard</b>	<b>Permitted/ Required</b>	<b>Approved</b>
	<b>Tract Area</b> CR 3.0 C 2.0 R 2.75 H 60T	n/a	27,647 sf (0.63 ac)
	Prior Dedication	n/a	7,714 sf (0.17 Ac)
	Proposed Dedication	n/a	532 SF (0.012 ac)
	<b>Site Area</b>	n/a	19,401 sf (0.45 acres)
	<b>Residential Density (GFA/ FAR)</b> CR 3.0 C 2.0 R 2.75 H 60T	76,029 sf (2.75)	76,029 sf/ (2.75) (up to 85 dwelling units)
	<b>Commercial Density (GFA/ FAR)</b> CR 3.0 C 2.0 R 2.75 H 60T	55,294 sf (2.0)	6,912 sf/ (0.25)
	<b>Total GFA/ FAR</b> (including existing building to remain)	<b>82,941 sf (3.0)</b>	<b>82,941 sf/ (3.0)</b>
	<b>MPDUs</b>	12.5%	12.5%
	<b>Building Height</b>	New Building: 60' Ex. Building: 99'	New Building: Up to 60' Ex. Building: 99'
	<b>Public Open Space (min)</b>	5% (970 sf)	5% (970 sf) <sup>1</sup>
	<b>Minimum Setbacks</b>	0	0

<sup>1</sup> Public Open Space provided offsite in accordance with Section 59.6.3.6.C of the Zoning Ordinance

7. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable 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 development 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 (FVO), particularly in the transition area between the commercial and residential areas.*

This Application 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 Site Plan 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. The Site Plan will contribute to the transit-oriented downtown by providing a highly articulated façade activated by windows and building entry points.

#### *Commercial Downtown*

Commercial activity, a mutually supportive mix of office, stores, and other business enterprises, is the defining feature of a successful downtown. The Site Plan may include a ground floor commercial component of up to 6,912 square feet.

#### *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 Site Plan will provide up to 85 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." 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. As conditioned, the Site Plan will provide 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 Application will provide 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 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. The main pedestrian entrance to the lobby has been located on Fenton Street to provide additional activation along this prominent frontage. Additionally, the precedent images provided by the Applicant demonstrate the intention of the building design to incorporate

appropriate transparency and articulation to activate the street and create a comfortable pedestrian scale.

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 Application respects the master plan recommended bicycle lanes on Fenton Street by providing adequate right-of-way for their future implementation.

The Site Plan 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 Application. 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 housing. The additional housing provided by the Site Plan 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 Application substantially conforms to the 2000 *Silver Spring Sector Plan*. The Application 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 Subject Property is not subject to an Urban Renewal 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 Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; 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 OCT 16 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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, October 10, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board