



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

MCPB No. 20-137
Preliminary Plan No. 12013002A
Studio Plaza
Date of Hearing: February 18, 2021

MAR 18 2021

RESOLUTION

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

WHEREAS, on September 11, 2012, the Planning Board, by Resolution MCPB No. 13-22, approved Preliminary Plan No. 120130020, creating 3 lots on 5.11 acres of land in the CBD-1 and Fenton Village Overlay zones, located on the block bound by Thayer Avenue, Fenton Street, Silver Spring Avenue, and Mayor Lane ("Subject Property"), in the Silver Spring CBD Policy Area and Silver Spring CBD Sector Plan ("Sector Plan") area; and

WHEREAS, on May 19, 2020, Urby Silver Spring Fee Owner, LLC ("Applicant") filed an application for approval of an amendment to the previously-approved preliminary plan(s) to *amend previously-approved Preliminary Plan No. 120130020 to increase the number of dwelling units from 749 to 793 and decrease the retail from 36,180 SF to 34,980 SF and increase the limits of disturbance for the Preliminary Forest Conservation Plan* on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12013002A, Studio Plaza ("Preliminary 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 February 5, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 18, 2021, 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 February 18, 2021 the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12013002A to *increase the number of dwelling units from 749 to 793 and decrease the retail from 36,180 SF to 34,980 SF and increase the limits of disturbance for the Preliminary Forest Conservation Plan* and revise the conditions of approval as follows:¹

Revised Condition No. 2

2. This Preliminary Plan is limited to 3 lots for a maximum of 626,781 square feet of base density (exclusive of bonus residential density for providing MPDUs), and a maximum net new trip generation of 297 morning peak-hour trips and 351 evening peak-hour trips. The residential unit count and non-residential square footage of each phase will be finalized at the time of Site Plan(s). The cumulative densities across all phases must result in a trip generation estimate that does not exceed the established maximum trip cap for either the morning peak period or evening peak period.

Revised Condition No. 5

5. The Applicant must comply with the following conditions of approval of Preliminary Forest Conservation Plan 12013002A, approved as part of this Preliminary Plan Amendment.

- a. Final Forest Conservation Plan must include detailed and specific tree protection measures for off-site trees affected by the Limits of Disturbance (LOD).
- b. Prior to any clearing, grading or demolition within the Subject Site, the Applicant must purchase credits from a forest mitigation bank or, if there are no applicable mitigation banks available, submit a fee-in-lieu payment which satisfies the remaining 0.02-acres of afforestation requirement, for a total of 0.66-acres of afforestation requirement (the Phase 1 afforestation requirement of 0.64-acres was satisfied via fee-in-lieu with Site Plan No. 820130010) resulting from the change in LOD associated with Preliminary Plan Amendment No. 12013002A.
- c. The Final Forest Conservation Plan must be signed by the plan preparer and Applicant, and the Applicant must provide and sign the developer's certificate.
- d. The sediment and erosion control plan and stormwater management plan must be consistent with the LOD and associated tree protection measures shown on the Final Forest Conservation Plan.

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.

- e. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.

Revised Condition No. 17

- 17. The Subject Property is within the Blair High School cluster area. As applicable to Phase 1 only, the Applicant must make a School Facilities Payment to MCDPS at the middle school level at the high-rise unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

New Condition 21

- 21. For the Urby Silver Spring, Phase 2 Site, the Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 16, 2020 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.

New Condition 22

- 22. All necessary easements must be recorded in the Land Records prior to the issuance of the first above-grade building permit.

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

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally-approved preliminary plan, and all findings not specifically addressed remain in effect.

- 1. *The layout of the subdivision, including size, width, shape, orientation and density 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 amendment does not modify the size, width, shape, or orientation of the lot. The Amendment will increase the density across all lots by 44 multifamily units and decrease the retail by 1,200 square feet.

As conditioned, each Property included within the Preliminary Plan Application, as amended, will be required to submit a Site Plan. Setbacks and open space requirements are determined at the time of each Site Plan.

2. Public facilities will be adequate to support and service the area of the approved subdivision.

In accordance with the Sector Plan and 2018 Bicycle Master Plan, the master-planned designated roadways and bikeways are as follows:

1. Silver Spring Avenue is designated as a business street with a 70-foot right-of-way with a shared roadway.
2. Fenton Street is designated as an arterial road, with an 80-foot right-of-way and a two-way separated bike lane on the west side of the street.
3. The Fenton Street Alley is a public alley with a 20-foot right-of-way.

The Applicant proposes an additional 44 multi-family units beyond what was approved under Preliminary Plan No. 120130020 and a decrease of 1,200 square feet of retail. As a condition of approval included in the original Preliminary Plan, the Board established a vehicular trip cap of 297 AM peak hour trips and 351 PM peak hour trips for the entire Application. Based on trip generation guidance included in the 2017 Local Area Transportation Review Guidelines (LATR), in place at the time the Subject Application was reviewed, the Amendment will generate fewer trips than the previously-conditioned trip caps, as retail has a significantly higher trip generation rate when compared to residential, especially in the evening peak period. The combined estimated peak hour morning trips for the density built in Phase 1 and approved for Phase 2 results in 206 morning peak hour trips and 290 evening peak hour trips. Given the trip cap established with the Preliminary Plan 120130020, there are 91 morning peak hour trips and 61 peak hour trips remaining for Phase 3.

Since the Subject Application would result in an overall decrease from what was previously evaluated and approved, the LATR requirements for Preliminary Plan Amendment 12013002A were satisfied with a transportation exemption statement, dated March 16, 2020.

Preliminary Plan Application #12013002A for Urby Silver Spring located at 905 Silver Spring Avenue is scheduled to come before the Planning Board for review in winter of, 2021. The transition clause of the 2020-2024 Growth and Infrastructure Policy allows applications accepted before January 1, 2021 to be tested for school

adequacy under the rules of the 2016-2020 Subdivision Staging Policy. Therefore, the FY21 Annual School Test, approved by the Planning Board on June 25, 2020 and effective July 1, 2020, is applicable. The Applicant has a valid adequate public facilities approval for 749 units and this amendment would result in 44 additional multifamily high-rise units.

Based on the school cluster and individual school capacity analysis performed, using the FY2021 Annual School Test under the 2016-2020 Subdivision Staging Policy, there is adequate school capacity for the amount and type of development approved by this Application.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAR 18 2021 (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 Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor, and Commissioner Paterson absent at its regular meeting held on Thursday, March 11, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board