

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-069
Preliminary Plan No. 120210240
Easley's Subdivision
Date of Hearing: July 21, 2022

AUG 10 2022

RESOLUTION

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

WHEREAS, on January 26, 2022, Bobby Athanasakis ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 0.14 acres of land in the CR-3.0 C-2.0 R-2.75 H-110T zone, located at 904 Silver Spring Avenue ("Subject Property"), in the Silver Spring/Takoma Park Policy Area and 2000 *Silver Spring CBD Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120210240, Easley's Subdivision ("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 July 11, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 21, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 4-0-0 Chair Anderson and Commissioners Cichy, Patterson, and Verma voting in favor with Commissioner Rubin absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210240 to create one lot on the Subject Property, subject to the following conditions:¹

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.

General Approval

1. This Preliminary Plan is limited to one lot for a multi-use building with a maximum total of 10,000 square feet including 6,820 square feet of residential uses for up to 6 units, and 3,180 square feet of non-residential uses.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

Plan Validity Period

3. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 2, 2022 and 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated January 5, 2022 and 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated March 23, 2022 and 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 amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

8. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of any subsequent Site Plan(s) associated with this Preliminary Plan. The number and location of site elements including but not limited to buildings, dwelling units, site circulation, and sidewalks is determined through site plan review and approval.
9. If an approved site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan amendment.

Future Site Plan Approval Required

10. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan or site plan amendment.

Transportation

Existing Frontage Improvements

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate 35 feet from the existing pavement centerline along the Subject Property frontage for Silver Spring Avenue.

Record Plats

12. There shall be no clearing or grading of the site prior to certification of Site Plan No. 820210160.

Easements

13. The record plat must show necessary easements.

Certified Preliminary Plan

14. The certified Preliminary Plan must contain the following notes:

a. Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, 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.

15. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:

- a) Show resolutions and all appropriate agency approval letters on the certified set; and
- b) Include the approved Fire and Rescue Access plan in the certified set.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or 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 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.

a) The block design is appropriate for the development or use contemplated

The proposed subdivision is located within an existing block that is appropriate for the proposed multi-use development.

b) The lot design is appropriate for the development or use contemplated

The proposed lot is appropriate for the development proposed. The 0.13 acre (5,500 square foot) rectangular lot will also provide frontage improvements for bicycle and pedestrians. The proposed subdivision has been reviewed and approved for stormwater and fire access adequacy by the Montgomery County Department of Permitting Services.

c) The Preliminary Plan provides for required public sites and adequate open areas

i. Master Planned Sites

There are no Master Planned open areas or sites recommended for this particular Property. As discussed in Finding 2(c) below, the proposed subdivision will dedicate additional public right-of-way and will implement master planned transportation improvements.

ii. Transportation and Utilities

The Applicant will be dedicating 10 feet along the Silver Spring Avenue frontage to contribute to the Master Planned right-of-way of 70 feet. The Applicant will construct Master Planned frontage improvements including a seven-foot-wide minimum landscaped street buffer and a seven-foot-wide minimum sidewalk, which transitions to the existing sidewalks on both side of the Site. The design of the sidewalk and the landscape street buffer complies with the 2019 *Silver Spring Streetscape Standards*.

d) The Lot(s) and Use comply with the basic requirements of Chapter 59

As shown in Site Plan Finding 2.d, Table 3, the proposed lot will comply with the development standards for the CR zone standard method development and related development standards.

2. The Preliminary Plan substantially conforms to the Master Plan.

a) Land Use

The Property is located within the 2000 *Silver Spring CBD Sector Plan* ("Sector Plan"), which contains themes that articulate the shared goals and vision for the CBD and demonstrate how successful development incorporates multiple themes to "create varied land uses, development patterns, environments, and transportation choice ... to create variety, the hallmark of an active downtown."(p. 15) The development meets these goals and vision by creating a mixed-use commercial building that is scaled to the surrounding neighborhood and enhances the pedestrian experience in its vicinity.

Transit-Oriented Downtown

The Property is located less than a half mile from the Silver Spring Metro/MARC train/Transit Center (and future Purple Line station). By locating within the walksheds of these transportation choices, the workers and visitors coming to the site increase transit demand and support transit-oriented development. The Site is also proximate to the many existing and planned bike lanes within the Silver Spring area.

Commercial Downtown

The project allows for a mix of retail/restaurant and residential uses. These uses will complement the existing commercial uses in Fenton Village in an up-to-date building.

Residential Downtown

The project includes residential uses and shares a block of Silver Spring Avenue that includes both single-family homes as well as approved 4-6-story multi-family development immediately across the street. At four stories, the new multi-use building will be compatible with the other residential uses as the uses on the block intensify toward Fenton Street.

Civic Downtown

The new streetscape, planters, architectural treatments and visual amenity, as conditioned, provide a number of elements adding to the fabric of the civic spaces of the Sector Plan area.

Green Downtown

The project includes recommended elements of the Green Downtown such as new public streetscape, with a street tree and other landscape plantings, and planter on the ground floor near the building entrance and also provides planters on the second-floor terrace/balconies which will be visible to other tenants and passersby.

Pedestrian-Friendly Downtown

As conditioned, the project provides new streetscape per the Silver Spring Design Guidelines including sidewalks, lighting and a street tree. The four-story building is scaled and designed in a manner sensitive to the pedestrian environment.

Per the Applicant's statement of justification, the Applicant owns and operates the iconic Manny and Olga's restaurant at 8107 Fenton Street, which it has done since the early 1990s. This family-owned business -- with four restaurants in Silver Spring/Wheaton, one in Bethesda and four in the District of Columbia -- has a well-established business base in Montgomery County and is a highly localized business presence. The family business, now in its second generation of operators, seeks to relocate the restaurant currently operating out of leased space on Fenton Street into a business-owned building. This is consistent with the Applicant's business model at each of its other locations and gives the business a long-term interest in remaining in Silver Spring, along with a potential opportunity to expand its operations. This furthers the overall Sector Plan and Fenton Village Overlay zone goals of fostering smaller, locally owned and family-owned businesses.

Fenton Village Overlay

The Sector Plan created the Fenton Village Overlay to revitalize the area, facilitate housing that will upgrade the physical environment and bring new residents, and provide a pedestrian-friendly environment that encourages people to stroll and stay. The Proposal will meet these objectives by redeveloping a currently vacant piece of land into a mixed-use building with ground floor activating uses and residential units above, all within a low rise building that will improve the surrounding streetscape.

b) Environment

The Sector Plan states, "Stormwater management is the most important environmental issues to address in the Silver Spring CBD." The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code and the Applicant received a Combined Stormwater Management Concept/ Site Development Stormwater Management Plan approval from MCDPS Water Resources Section on January 5, 2022 (discussed in Finding 5 below, in more detail).

The Sector Plan also recommends enhancement of the natural environment by creating green space. The Applicant is providing streetscape improvements which includes a tree and landscape bed. Furthermore, a planter box will be located onsite near the building entrance. The second-floor building layout includes private balconies/terraces featuring landscape planters which offer visual green relief from the highly urbanized setting.

The Sector Plan has recommendations on air quality which includes considerations for exhaust vents to be located away from residential balconies/terraces and other conflicting locations. The exhaust fans for the restaurants are located on the upper roof. Per applicable code requirements, this equipment is will be vertically discharged above the roof line and appropriately distanced from any apartment air intakes and apartment openings/ balconies.

The Sector Plan also recommends incorporating recycling and energy efficient programs and standards into new development. The Applicant is providing enclosed areas for trash and recycling bins at the southeast corner of the site on the Ground Floor level for the business and residential occupants of the building to recycle items. The Applicant will incorporate energy efficient programs, materials and final design details taking into consideration the International Green Construction Code (IGCC), which will be addressed at the time of building permit.

c) Transportation

Per the 2000 *Silver Spring CBD Sector Plan* and the 2018 *Master Plan of Highways and Transitways*, Silver Spring Avenue is classified as a Business District Street with a master-planned minimum right-of-way of 70 feet. As conditioned, the Applicant is dedicating an additional 10 feet to public right-of-way along the Site frontage to achieve 35 feet from the pavement centerline and the property line (half of the total 70-foot width).

The 2000 *Silver Spring CBD Sector Plan* and the 2018 *Bicycle Master Plan* do not recommend designated bikeways along Silver Spring Avenue.

The 2000 *Silver Spring CBD Sector Plan* encourages the use of alternatives to automobile transportation to reduce air pollution. The project has no on-site parking for the Ground Floor Retail/Restaurant Use, or for the Residential Use (six residential apartments units), thereby disincentivizing automobile use to the Ground Floor Retail/Restaurant use by employees and customers; and disincentivizing automobile ownership by residents and automobile use by their guests and invitees.

Additionally, the Applicant is providing a Transportation Demand Management Plan ("TDM") which will identify a site-specific individual responsible for assisting and facilitation the Department of Transportation's efforts to achieve County's Non-Auto Driver Mode Share (NAMDS) goals and other traffic mitigation and community goals. As part of the TDM plan the applicant will provide space on-site for TDM-related information in a location visible to employees, residents, and other project users.

The physical absence of on-site parking combined with the operational provision of a TDM Plan substantially complies with this Sector Plan recommendation.

Therefore, as conditioned, the project conforms with the applicable master plans.

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

a) Roads and other Transportation Facilities

i. Existing Facilities

In this location, Silver Spring Avenue currently has a 50-foot right-of-way with a 4-foot sidewalk, and 36-foot travel-way with on-street parking.

ii. Proposed public transportation infrastructure

As discussed in Finding 2.c, the Site will provide the master-planned frontage improvements to achieve the 70-foot right-of-way for Silver Spring Avenue.

b) Local Area Transportation Review (LATR)

The project studied the impact of constructing six residential multi-family units and 3,600 square feet of retail uses on the Site. In accordance with the methodologies set forth in the 2022 Local Area Transportation Review Guidelines, the densities evaluated are estimated to generate 14 new morning peak hour person trips and 37 new peak hour evening trips. As the project is not estimated to generate more than 50 peak hour person trips in either the morning or evening periods, no further transportation impact analysis was required. Furthermore, per the 2021-2024 Growth and Infrastructure Policy, a finding can be made for adequate public facilities for transportation infrastructure.

c) Other Public Facilities and Services

Schools

The project is served by Sligo Creek ES, Silver Spring International MS and DCC Blair HS. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 1 - Applicable FY2023 School Adequacy

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Sligo Creek ES	664	636	95.8%	+28	No UPP	113	161	261
Silver Spring Internatl. MS	1,170	1,113	95.1%	+57	No UPP	183	291	467
Montgomery Blair HS ²	2,867	2,619	91.3%	+248	No UPP	428	822	1,252

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY23 Annual School Test, Sligo Creek ES, Silver Spring International MS and Montgomery Blair HS do not require any UPP as identified in Table 1. If the project is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

Calculation of Student Enrollment Impacts

To calculate the number of students generated by the proposed plan, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 6 multifamily low-rise units that are not age-restricted, the proposed project is estimated to generate the following number of students based on the subject property's location within an Infill Impact Area:

² Projected enrollment reflects the estimated impact of CIP P651908, which will reassign students between the Downcounty Consortium, Walter Johnson HS and Woodward HS in 2026.8

Table 2 - Estimated Student Enrollment Impacts

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	0	0.195	0.000	0.096	0.000	0.139	0.000
SF Attached	0	0.166	0.000	0.091	0.000	0.116	0.000
MF Low-rise	6	0.059	0.354	0.023	0.138	0.032	0.192
MF High-rise	0	0.034	0.000	0.015	0.000	0.016	0.000
TOTALS	6		0		0		0

As shown in Table 2, on average, this project is estimated to generate 0 elementary school students, 0 middle school students and 0 high school students. The estimated number of students generated do not exceed the adequacy ceilings identified for each school in Table 1. Therefore, no additional UPPs are required and neither are partial payments across multiple UPP tiers.

Analysis Conclusion

No UPP condition required. Montgomery County may modify the per unit UPP rates prior to payment of any required UPPs. The Applicant must pay the above UPPs to the Montgomery County Department of Finance based on the rates in effect at the time of payment.

Other

Public facilities and services are available and will be adequate to serve the proposed 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 *Growth and Infrastructure Policy* resolution currently in effect and will be adequate to serve the Property.

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

A Forest Conservation Exemption (42021103E) was confirmed for the project on June 15, 2021. The application qualifies for the exemption under 22A-5(s)(1) because the activity is occurring 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.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a Combined Stormwater Management Concept/ Site Development Stormwater Management Plan approval from MCDPS Water Resources Section on January 5, 2022 (Attachment B). Due to the small lot size, a negligible increase in runoff and constraints such as existing utilities and the existing shallow storm drain system, a stormwater management waiver was granted. However, a payment of stormwater management contribution is required. Additionally, the site is not in a special protection area and therefore not subject to a water quality plan requirement and is not located in a floodplain.

6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.

Not applicable to this Property.

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

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for three years 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; and

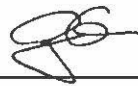
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 10 2022 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Verma, seconded by Commissioner Cichy, with a vote of 4-0-1; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, and Patterson, voting in favor of the motion, Commissioner Rubin abstaining, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.



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