

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

MCPB No. 17-114
Preliminary Plan No. 12015003B
Elizabeth Square
Date of Hearing: December 7, 2017

DEC 11 2017

RESOLUTION

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

WHEREAS, on July 28, 2015, the Planning Board, by Resolution MCPB No. 15-89, approved Preliminary Plan No. 120150030, creating one lot on 2.68 acres of land in the CBD-1 and CBD-2 zones, located at the northwest quadrant of the intersection of Second Avenue and Apple Avenue ("Subject Property"), in the Silver Spring CBD Policy Area and *Silver Sprig CBD Sector Plan* ("Sector Plan") area; and

WHEREAS, on July 25, 2017, the Planning Board approved an amendment to Preliminary Plan No. 12015003A (MCPB No. 17-059) to modify condition 1, condition 7 and condition 17 to allow for the creation of up to four (4) lots to allow for phased platting on the Subject Property; and


WHEREAS, on June 28, 2017, The Housing Opportunities Commission of Montgomery County, Alexander House Development Corporation, and Acorn Storage No. 1 LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to create one lot consisting of 2.84 acres zoned CR 3.0: C 2.0, R 2.75, H 90T and CR 5.0: C 4.0, R 4.75, H 145T to allow for a maximum development density of 996,109 square feet on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12015003B, Elizabeth Square ("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 November 27, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to

Legal Sufficiency:


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WHEREAS, on December 7, 2017, 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 Preliminary Plan No. 12015003B to create one lot consisting of 2.84 acres zoned CR 3.0: C 2.0, R 2.75, H 90T and CR 5.0: C 4.0, R 4.75, H 145T to allow for a maximum development density of 996,109 square feet with the following conditions, which supersede the conditions included in Preliminary Plan No. 120150030 and 12015003A:¹

1. Approval is limited to one lot, which may be platted in up to two phases, with a maximum density of 996,109 square feet of total development. The subdivision includes: i) up to 853,510 square feet of residential uses for up to 906 high rise residential dwelling units, including 25% moderately priced dwelling units (MPDUs) and 10% workforce housing units (WFHUs), or MCDHCA approved equivalent for either; and ii) up to 5,451 square feet of non-residential uses; with up to an additional 137,148 square feet of publicly owned or operated facilities, including a regional recreation and aquatic center.
2. The Applicant must comply with the conditions of approval for Sketch Plan 320170090.
3. Prior to recordation of the Phase II plat, the County Council must abandon the portion of public right-of-way subject to Right-of-Way abandonment case # AB 758, "Second Avenue and Fenwick Lane."
4. 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 July 7, 2017, 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.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letters dated October 6, 2017 (as

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.

amended via e-mail dated October 9, 2017), and November 22, 2017, 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.

6. The Planning Board accepts the recommendations of the Montgomery County Department of Fire and Rescue (MCFRS) in its letter dated September 18, 2017, 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 MCFRS, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. No above-grade building permit for new development on the Subject Property may be released prior to recordation of plat(s) for the portion of the property associated with the applicable building permit, except for any sheeting and shoring permit and any permit for renovation of the existing Alexander House.
8. The Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
9. The Applicant must dedicate and show on the applicable final record plat(s) the following right-of-way dedications consistent with the *Silver Spring CBD Sector Plan* and Montgomery County Code Chapter 50 Subdivision Regulation requirements:
 - a. A dedication of the Apple Avenue frontage necessary to provide the Sector Plan-recommended 30-foot-wide right-of-way between the Subject Property line and right-of-way centerline.
 - b. Prior to recordation of the plat, the Applicant must record in the Montgomery County Land Records an easement, for the full width and extent of the Capital Crescent Trail on the Subject Property, granted to and approved by Montgomery County, in trust for the public, in a recordable form containing provisions to address the following:
 - i. Entitlement for open and unobstructed public use of the easement for all customary pedestrian, bicycle, general public, and emergency access. The easement is a surface easement, intended to permit use of the area beneath the shared use path as structured parking;
 - ii. Obligation for the Applicant to design and construct the shared use path as shown on the Preliminary Plan pursuant to comparable MCDOT structural construction standards, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail construction;

- iii. Obligation for the Applicant to maintain and repair the shared use path, as shown on the Preliminary Plan, in a condition acceptable to MCDOT for all access, at the Applicant's expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - iv. Obligation for the Applicant to keep the shared use path free of snow, litter and other obstructions and hazards at all reasonable times, at its expense, unless such obligation has been assumed by another entity as part of the overall trail maintenance;
 - v. Entitlement for the Applicant or its designee to close the shared use path for normal maintenance and repair at reasonable times and upon reasonable prior notice to the public.
10. The Applicant must install short-term public bicycle parking along the retail and regional recreation and aquatic center frontages and near public use space, and secure long-term bicycle parking, internal to the residential buildings or garages, for use by staff and residents. The exact number and location of bicycle parking will be determined at the time of Site Plan.
11. 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 and must execute the TMAg prior to the release of any above-grade building permit for new development on the Subject Property except for any sheeting and shoring permit and any permit for renovation of an existing Alexander House. The TMAg must include trip mitigation measures recommended by MCDOT.
12. 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, 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. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
13. The record plat must show necessary easements.
14. No clearing, grading, or recording of plats prior to Certified Site Plan approval, unless the Property to be cleared, graded or subject to a new record plat is covered by an existing Certified Site Plan.

15. Final approval of the number and location of buildings, dwelling units including MPDUs and WFHUs, or MCDHCA-approved alternatives, on-site parking, site circulation, and sidewalks will be determined at site plan for the relevant phase.
16. In accordance with the *2016-2020 Subdivision Staging Policy*, the Applicant must “fix or fund” the improvements of all public pedestrian infrastructure within 500-feet of the Subject Property that does not comply with the Americans with Disabilities Act (“ADA”) requirements, as shown on the Certified Site Plan, as determined by MCDPS ROW Permitting, prior to issuance of first above-grade building permit.
17. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one hundred twenty-one (121) months from the date of mailing of the Planning Board resolution, in accordance with the phasing plan and justification statement submitted by the Applicant on November 20, 2017.
18. This Preliminary Plan has a phased validity period. Within Phase I, which will begin 30 days after the mailing date of this Resolution and last for 36 months, the Applicant must record a plat for the first phase of construction. Within Phase II, which will begin at the completion of Phase I and last for 36 months, the Applicant must record a plat for the second phase of construction, which may include the area of Phase I. Upon the end of Phase II, a final record plat for all property delineated on the approved Preliminary Plan must be recorded, or a request for an extension must be filed.

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*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations including the technical review standards in Section 50.4.3. The Application meets all applicable sections. The size, width, shape and orientation of the lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. The application substantially conforms to the *Silver Spring CBD Sector Plan*. The application complies with the land use recommendations for the Subject

Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. This Preliminary Plan Amendment creates one lot that fills the entire block. Within this block, there is adequate room to accommodate three residential high-rise structures (two new and one existing to remain), the government operated facility, parking and the required amount of public open space.

The lot was reviewed for compliance with the dimensional requirements for the CR 3.0: C 2.0, R 2.75, H 90T and CR 5.0: C 4.0, R 4.75, H 145T zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone as demonstrated in the Staff Report. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

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

As described below and in the Staff Report, the Preliminary Plan Amendment substantially conforms with the recommendations of the Sector Plan.

The Subject Property lies within the “Other Areas of the CBD” section identified in the 2000 Silver Spring CBD Sector Plan. The Sector Plan reconfirmed the zoning applied to all parcels in the remaining areas of the CBD outside the Revitalization Areas defined in the Plan and contained no other specific recommendation.

The Sector Plan’s vision for Silver Spring’s future is “to create a development environment that invites revitalization.” The Subject Property is within a short walking distance to the Silver Spring Transit Center, 2 ½ blocks away, that includes Metro, the MARC Line, Metrobus, Ride-on Bus, and the future Purple Line, which will encourage and support revitalization in a manner consistent with the Sector Plan’s vision. The Project will help to activate the streets of Second Avenue, Fenwick Lane, and Apple Avenue.

Transportation Recommendations

The Sector Plan and the 2005 *Countywide Bikeways Functional Master Plan* include the following nearby roadway/bikeway facilities:

- a. Second Avenue: a Business District roadway, between Spring Street and Colesville Road, with a minimum master planned right-of-way of 80 feet. The east side of Second Avenue (opposite the subject property) is the site of the Silver Spring Green Trail (SP-10).
- b. Apple Avenue: a Business District roadway with master planned on-road bicycle facilities located along the southern Site frontage, west of Second Avenue, with a minimum master planned right-of-way of 60 feet.

- c. Fenwick Lane: a Business District roadway with master planned on-road bicycle facilities located along the northern Site frontage, west of Second Avenue, with a minimum master planned right-of-way of 50 feet.
- d. Capital Crescent Trail (SP-12): A regional shared use path, located along the west site frontage, that connects between Silver Spring, Maryland and Union Station in the District of Columbia. SP-12 will be constructed as a 12-foot wide path within a public use and access easement as part of the subject project.

The Application is consistent with the above recommendations and will provide the necessary right-of-way dedications and streetscape improvements. In addition, the Applicant will continue to coordinate with MTA/MCDOT plans for construction of the CCT across the Property.

Sector-Planned Transportation Demand Management

As a mixed-use development within the Silver Spring Transportation Management District (TMD), the Applicant is required to enter into a Traffic Mitigation Agreement to participate in the Silver Spring TMD.

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

Roads and Other Transportation Facilities

Transportation access is adequate to serve the development by this Preliminary Plan Amendment.

Existing Facilities

The Subject Property has vehicular access points on Apple Avenue and Fenwick Lane. The Application will maintain the existing Apple Avenue garage and loading entrances for the Alexander House and to reconfigure the western terminus of Apple Avenue to accommodate a drop-off cul-de-sac between Elizabeth House III and the Alexander House. On Fenwick Lane, access points are configured as follows: a single garage access point (24-feet wide) for both Phase I and Phase II near the western terminus of Fenwick Lane, two loading access points (one each for Phase I and Phase II). Parking will be provided within structured garages, accessed via Apple Avenue and Fenwick Lane, internal to the site. Pedestrian and bicycle access to the site will be provided on all frontages via public sidewalks and low-volume urban streets, respectively. Additionally, the west (rear) face of the Property will include the regional Capital Crescent Trail shared use path within a public access easement.

The immediate area is well served by transit that includes the Red Line Silver Spring Metrorail Station, Metrobus, RideOn, and the Silver Spring VanGo Circulator. Future transit in the area includes a proposed Purple Line station at the existing Metrorail Redline station. Specific transit routes near the site include:

1. RideOn Bus Routes 1, 2, 3, 4, 5, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 28
2. WMATA Metrobus Routes F4, J1, J2, J3, J4, J5, Q2, S2, S4, Y2, Y7, Z2, Z6, Z8, Z9, Z29, Z11, Z13, 70, 71, 79

Proposed public transportation infrastructure

The streetscape improvements to the streets surrounding the Subject Property will conform to the Silver Spring Streetscape Guidelines (or as otherwise approved by the Planning Board). A public bike path will be located adjacent to the western Property line. The CCT bike path will be accessible from the Property at both north and south ends of the Project.

Proposed private transportation infrastructure

The Application provides outdoor amenities consisting of several components that include a central plaza area framed by existing residences and the Phase I building, the entry court at Second Avenue and drop off at the terminus of Apple Avenue, pedestrian connections to the bike trail, and distance-measured walking circuits on the Property and in the public right-of-way.

Local Area Transportation Review (LATR)

The Preliminary Plan Amendment is estimated to generate 249 person trips during the AM weekday peak period and 331 person trips during the PM weekday peak period based on the trip generation rates included in the M-NCPPC LATR Guidelines and Institute of Transportation Engineers Trip Generation Manual. Because the Application generates over 50 peak hour person trips, a traffic study was required for Local Area Transportation Review. The analysis completed for this Application found that all study intersections will remain within Subdivision Staging Policy standards and therefore no mitigation is required.

The Applicant revised the traffic study dated June 12, 2017, to account for additional publicly owned or operated uses (e.g. an increase from 120,000 SF to 137,148 SF for the SCRRAC). This increase was offset by a previously unaccounted for existing use on the Subject Property for which the Applicant is eligible for a trip credit (e.g. 10,000 SF of office). After accounting for the credit and the increase in SCRRAC density, the trip generation is still within the limits

of the June 2017 traffic study, and therefore no additional traffic analysis was necessary. A trip generation summary is provided in the Staff Report.

The Preliminary Plan Amendment is a modification to the Adequate Public Facilities findings made in Preliminary Plan 120150030. That Preliminary Plan was subject to the previous Subdivision Staging Policy (SSP) and the Amendment is subject to the current 2016-2020 SSP. Therefore, the increment of new development associated with this Amendment is subject to the new SSP Peak Hour Person Trip criteria. A summary of the Peak Hour Person Trips is provided in the Staff Report.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property will be served by public water and sewer systems. The application has been reviewed by MCFRS, and emergency vehicle access has been deemed adequate. Electrical and telecommunications services are also available to serve the subject property. Local health clinics, police stations and fire stations are all operating within acceptable levels as established by the Subdivision Staging Policy.

The Subject Property will be served by Woodlin Elementary School, Sligo Middle School, and Einstein High School. Pursuant to the Schools Test for FY 2018, the elementary and middle schools serving the Project have adequate capacity and the high school serving the Project is inadequate, but open conditionally due to a placeholder project for a 14-classroom addition preventing this cluster from entering moratoria. Water and sewer and other utilities are available to and currently serve the Property. Water and sewer and other utilities are located in Apple Avenue, Second Avenue and Fenwick Lane. Connections (one or multiple connections) off one or more of these roads adjoining the Property will service the Property. Montgomery County Fire Station No. 1 is located approximately $\frac{3}{4}$ mile from the Property on Georgia Avenue. An auxiliary office of the 3rd District Police Station serving the Silver Spring CBD is located within the same building.

Adequate Public Facilities Ordinance Validity Period

In accordance with the Subdivision Regulations, Section 50.4.3.J.5.b, an Applicant may request an Adequate Public Facilities Ordinance validity period longer than the minimum by submitting a development schedule or phasing plan for completion of the Project. To approve the extended validity period, the Planning Board must find that it is warranted given the size or complexity of the subdivision and that an extension would not be adverse to the public interest. The Planning Board's approval must be conditioned on adherence to the provided development schedule or phasing plan, and the Planning Board may impose other improvements or mitigation conditions if those conditions are

needed to assure adequate levels of transportation or school service during the validity period.

The Applicant submitted a phasing plan and justification statement on November 20, 2017, requesting a longer validity period than the minimum period specified in the Subdivision Regulations. Under the provided phasing plan, Phase I (63% of the Project) will be completed within five years following approval of the Preliminary Plan Amendment and Phase II will likely be completed between five and ten years after approval of the Preliminary Plan Amendment. Under this phasing plan, the Project will be implemented as follows:

- i. Phase I: Construction of Elizabeth House III, including the South County Regional Recreation and Aquatic Center and renovation of the existing Alexander House, and
- ii. Phase II: Demolition and replacement of the existing Elizabeth House building with the new Elizabeth House IV building.

Extension of the Adequate Public Facilities Validity Period is warranted for this Application given the size and complexity of the proposal and because the phased approach will allow residents of the existing Elizabeth House to be relocated to the Elizabeth House III building (Phase I) before the existing Elizabeth House is demolished. This is in the public interest because it provides the Applicant flexibility to coordinate construction of this Project that provides significant public benefits in the form of the SCRRAC. The Planning Board approves the extended validity period.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22.*

The Preliminary/Final Forest Conservation Plan for this project was originally approved by the Board during the public hearing on October 20, 2016. The current scope of the project has been expanded slightly to incorporate the 0.15-acre triangular portion of the Fenwick Lane ROW. The original Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) # 420141320 was approved on April 15, 2014. The NRI/FSD # 420180420 addressing the project expansion was approved on September 28, 2017. The cumulative Subject Property contains no forest, streams, wetland, floodplains or associated buffers. Furthermore, there are no known rare, threatened, or endangered species on or near the site. There are five significant trees and two specimen trees identified within the study area of the NRI/FSDs. The project area is within the Lower Rock Creek watershed which is a use I watershed.

Although no forest exists onsite, the Application is subject to the Forest Conservation Law and there is an afforestation requirement of approximately

1/2 acres. Given the relatively small size of the Subject Property, the lack of environmentally sensitive areas, and the modest amount of afforestation requirements, the afforestation will be satisfied offsite by either a fee-in-lieu payment or the use of a forest conservation bank. Due to the proposed density of the development and the priority to provide onsite mitigation plantings under Section 22A-12b (3), the Subject Property is not an appropriate setting to also accommodate landscape plantings applied toward forest conservation requirements.

The current FCP is substantially similar to the previously approved version, and there are no changes from the previously approved variance request. The project already obtained the permission for the removal of 2 subject trees, therefore, no variance request or findings need to be made as part of the current project. The previous planting mitigation of seven (7) 3" caliper native canopy trees are still shown/required on the current plans. As conditioned, the Preliminary Forest Conservation Plan conforms to the Forest Conservation Law.

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 on July 7, 2017. The plan will meet stormwater management goals via ESD to the MEP with the use of green roof, micro-bio retention (including planter boxes), and Silva Cells. Due to site constraints, full stormwater management treatment cannot be provided, so a waiver was also granted.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 11 2017 (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 Commissioner Fani-González, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, December 7, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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