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SITE PLAN ENFORCEMENT AGREEMENT

THIS AGREEMENT, made this 26th day of July, 1990, by and between CITY PLACE LIMITED PARTNERSHIP (the "Developer"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

W I T N E S S E T H:

WHEREAS, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as a part of the site plan review process that the applicant enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the development program required by the Section 59-D-3.23(m) of the Montgomery County Code, 1984 (as amended); and

WHEREAS, pursuant to Section 59-D-3 of the Montgomery County Code, 1984 (as amended), Developer filed with the Planning Board an application for approval of a site plan, denominated Site Plan No. 8-88046; and

WHEREAS, the Planning Board approved such application on August 11, 1988, subject to certain conditions, in an opinion attached to this Agreement as Exhibit "A"; and

WHEREAS, the property that is the subject of Site Plan No. 8-88046 (the "Subject Property") consists of 2 lots, with lot 1 consisting of approximately 2.114 acres located in the southeast quadrant of the intersection of Ellsworth Drive and Fenton Street ("Lot 1"), and lot 2 consisting of approximately 0.26 acres located in the southwest quadrant of the intersection of Ellsworth Drive and Fenton Street ("Annex"), and will contain the City Place project (the "Project"); and

WHEREAS, maintenance provisions for on-site public use space and amenity features at the Project have been set forth in the Maintenance Schedule attached to this agreement as Exhibit "C"; and

WHEREAS, programming provisions for events at the Project's park have been set forth in the Programming Provisions Schedule attached to this agreement as Exhibit "D"; and

I certify the within document to be a true and correct copy of the original executed document.

Thomas G. Kennedy, Associate General Counsel

WHEREAS, Developer has attached to this Agreement a copy of the approved site plan for the Subject Property, as Exhibit "E", and a copy of the approved landscaping plan for the Subject Property, as Exhibit "F"; and

WHEREAS, the parties to this Agreement desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code 1984 (as amended),

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code 1984 (as amended), the parties to this Agreement agrees as follows:

1. In accordance with the Planning Board's approval of Site Plan No. 8-88046, Developer agrees that, when construction of the Project commences as set forth in the Development Program attached to this Agreement as Exhibit "B", or any amendments thereto (the "Development Program"), it will execute and maintain all the features of the site plan required by Section 59-D-3.23 that are applicable to the approval granting Site Plan No. 8-88046, and any subsequent amendments approved by Planning Board. Developer agrees to install and construct all such features of the site plan in a good and workmanlike manner.

2. Developer agrees that construction of the Project will progress in accordance with the Development Program as set forth in Exhibit "B", or any amendments thereto.

3. Developer agrees to adhere to the Maintenance Provisions Schedule as set forth in Exhibit "C".

4. Developer agrees to adhere to the Programming Provisions Schedule as set forth in Exhibit "D".

5. Representatives or designees of the Planning Board may enter upon the Subject Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions of this Agreement. Whenever possible, a representative of Developer shall be present at such an inspection. In the event that the Planning Board representative or its designee determines on the basis of such an inspection that construction is not progressing in accordance with the approved site plan or the

Development Program, the representative or its designee shall promptly advise Developer concerning the problem. If the Planning Board shall be notified in writing of the name and address of any mortgagee(s) of the Developer's interest in the Project, the Planning Board agrees to send to said mortgagee(s) which currently is The Chase Manhattan Bank, N.A., c/o Chase Corporate Services, Inc., Attn: Real Estate Finance, 1050 Connecticut Avenue, Suite 310, Washington, D.C. 20036 copies of all notices and other communications sent hereunder to the Developer and, in the event of the Developer's default, to afford said mortgagee(s) the same period after receipt of notice of default within which to cure said default as afforded the Developer to cure defaults under this Agreement. Within fifteen (15) days after written request from Developer at any time or times, the Planning Board shall furnish to Developer and any other parties reasonably requested, such as mortgages and purchasers of the Project a written statement certifying (i) whether or not this Agreement is unmodified and in full force and effect (or, if there have been modifications, whether or not this Agreement is in full force and effect as modified and identifying the modifications), (ii) whether or not, to the best of its knowledge, Developer is in default under this Agreement and, if there is any such default, specifying the nature thereof, and (iii) such other matters concerning the status of this Agreement and/or the performance of the parties respective obligations under this Agreement as shall be reasonably requested.

6. Representatives or designees of the Planning Board shall inspect the construction for compliance with Site Plan No. 8-88046 in accordance with the Development Program or any amendments thereto. Inspection of the Subject Property shall be made promptly after receipt of written notice from Developer as set forth in the Development Program and, whenever possible, a representative of Developer shall be present at such an inspection. The Planning Board shall promptly advise Developer in writing concerning the results of the inspection. All reasonable efforts will be made to conduct the inspection and inform Developer of the results within ten (10) working days. The Planning Board shall recommend

for issuance within a reasonable time any permits sought by Developer when the Planning Board determines that such permit requests are consistent with the approved site plan and any amendments thereto. Such approval shall not be unreasonably withheld.

7. In the event that any party deems there has been a breach of the terms, conditions and restrictions of this Agreement, that party may pursue all remedies provided by Maryland law.

8. Wherever any portion of this Agreement or the Development Program submitted as Exhibit "B", or any amendments thereto, is in conflict with the agreements pertaining to the Subject Property entered into between Developer and any federal, state and/or county agency, Developer shall promptly notify the Planning Board concerning such conflict. The Planning Board or its designee will cooperate in attempts to resolve the conflict. Should an unreasonable delay ensue due to a failure to resolve such conflict, Developer shall have the right to seek in a timely manner judicial determination of the rights and obligations of all parties, and the Planning Board, for its part, agrees to cooperate in expediting such judicial determination.

9. If Developer determines, following commencement of construction on the Subject Property, that the full Development Program cannot be achieved for any reason, Developer will submit for approval a restoration schedule to the designee of the Planning Board for purposes of amending the Development Program.

10. Approval of a feature of the site plan by the Planning Board after the inspection shall not constitute a warranty that the feature is free from latent defects. Therefore, if the Planning Board or its designee approves a feature of the site plan which contains a latent defect which was not readily apparent at the time of inspection, upon discovery of such latent defect, the Planning Board may avail itself of the remedial steps provided for under the terms of this Agreement.

11. This Agreement may only be modified by a writing signed by the parties hereto, their heirs, successors or assigns.

12. This Agreement shall be binding upon the heirs, successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 26th day of July, 1990, ~~1989~~.

WITNESS:

CITY PLACE LIMITED PARTNERSHIP

[Signature]

By: [Signature]
JERREY B. DIEMAN
General Partner

WITNESS:

MONTGOMERY COUNTY PLANNING BOARD

[Signature]

By: [Signature]

APPROVED AS TO LEGAL SUFFICIENCY

* * *

[Signature]
M-NCPPC Legal Department

Date 7/26

STATE OF Virginia
COUNTY OF Fairfax

*
*
*

to wit:

I HEREBY CERTIFY that on this 26th day of July, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared JERREY B. DIEMAN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument, as a general partner of City Place Limited Partnership, a Maryland limited partnership, and acknowledged that said partner executed the foregoing and annexed instrument as the act and deed of the said partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 11/30/94

[NOTARIAL SEAL]

* * *

STATE OF Maryland
COUNTY OF Montgomery

*
* to wit:
*

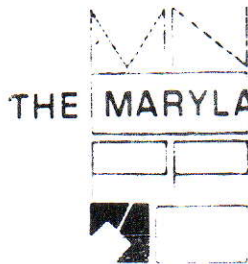
I HEREBY CERTIFY that on this 26th day of July, 1990, before me, a Notary Public in and for the State and County aforesaid, personally appeared Charles R. Loehr known to me (or satisfactorily proven) to be the Dep. Planning Com. of the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, a public body corporate, and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said public body corporate.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Suzanne C. Perkins
Notary Public

My Commission Expires: 5/1/94

[NOTARIAL SEAL]



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications, Motion of Comm. Floreen, seconded by Comm. Keeney, with a vote of 4-0; Commissioners Floreen, Keeney, Hewitt and Christeller voting in favor, with Comm. Henry temporarily absent).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87190
NAME OF PLAN: CITY PLACE

On 8/4/87, PETRIE DIERMAN & PARTNERS submitted an application for the approval of a preliminary plan of subdivision of property in the CBD-3 zone. The application proposed to create 2 lots on 2.46 acres of land. The application was designated Preliminary Plan 1-87190. On 8/11/88, Preliminary Plan 1-87190 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and upon evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87190 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended), including the Adequate Public Facilities Ordinance (Section 50-35(k)) pursuant to the guidelines for administration contained in the Annual Growth Policy, and approves Preliminary Plan 1-87190, subject to the following conditions:

1. Agreement with Planning Board limiting development to 298,455 square feet gross leasable area retail uses and 234,050 square feet office uses and requiring that Georgia Avenue/Colesville Road intersection improvements 1.A and 1.B from 8/8/88 Transportation Division memo be under construction prior to receiving building permit for office building
2. Execution of traffic mitigation agreement pursuant to the attached Transportation Management District conditions dated 10/20/88 prior to receiving any building permits
3. Dedication along Fenton Street 80' right-of-way except where existing building will remain. Applicant to provide covenant that remaining right-of-way will be dedicated if building is ever removed
4. Resolution of issues concerning use of existing alley prior to recording of plat

1-87190

-2-

5. Conditions of DEP stormwater management waiver
6. Site plan approval prior to recordation
7. Necessary easements
8. Smaller lot to be re-recorded with note limiting use to that shown on site plan

Date of Mailing: October 26, 1988

STAGING SEQUENCE FOR DEVELOPMENT

- BUILD NEW LOADING DOCK
- CONVERT EXISTING LOADING DOCK TO RETAIL.
- CONSTRUCT EXTERIOR FEATURES - NEW CANOPY, SCREEN WALL WITH FOOTERS, AND ARCHITECTURAL FEATURES (ALONG ELLSWORTH DRIVE ELEVATION AND FENTON STREET ELEVATION)
- CONSTRUCT SIDEWALK IMPROVEMENTS (BY OTHERS) INCLUDING PAVERS AND PLANTERS.

ENGINEER'S CERTIFICATE

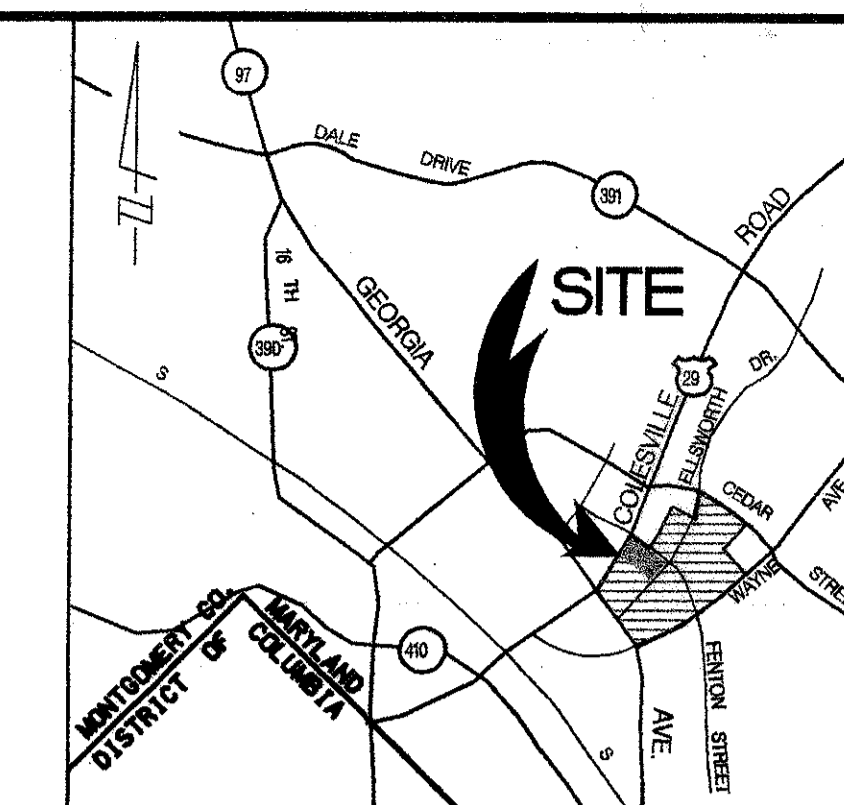
I hereby certify, to the best of my professional knowledge, information and belief, that the plan shown hereon conforms with the Montgomery County Subdivision Regulations as adopted October 1961 and as amended thereafter. Boundary information was obtained from the Land Records of Montgomery County, Maryland and topographic data was obtained from the M.N.C.P. & P.C.

Frank Roskopf

GENERAL NOTES

- GROSS SITE AREA = 2.11 ACRES / 92,075 S.F. ZONE IS CBD-2.
- BOUNDARY INFORMATION SHOWN HEREON WAS OBTAINED FROM AVAILABLE INFORMATION BY LOIEDERMAN SOLTESZ ASSOCIATES, INC.
- TOPOGRAPHIC INFORMATION SHOWN AT 2' INTERVALS ON THIS PLAN, WAS OBTAINED BY FIELD SURVEY COMPLETED BY LOIEDERMAN SOLTESZ ASSOCIATES, INC. MARCH 1998.
- THIS SITE IS TO BE DEVELOPED IN ACCORDANCE WITH SECTION 59-C-6.2352 "COMBINED DEVELOPMENT IN AN URBAN RENEWAL DISTRICT" OF THE MONTGOMERY COUNTY CODE.
- NO SWM FACILITIES ARE REQUIRED ON THIS SITE.
- THIS SITE IS SERVED BY PUBLIC WATER AND SEWER SYSTEMS AND IS PRESENTLY CLASSIFIED IN WATER AND SEWER CATEGORIES W-1 AND S-1, RESPECTIVELY.
- NO RECREATION FACILITIES ARE REQUIRED ON THIS SITE.
- PARKING ALLOCATION PROVIDED IN ELLSWORTH AVENUE GARAGE.
- NO PUBLIC ROAD DEDICATION IS REQUIRED.
- EXISTING LOADING DOCK WILL BE RELOCATED TO THE BACK OF DOWNTOWN SILVER SPRING RETAIL AS SHOWN ON SHEET 3 OF 6.
- PREVIOUS PLAN APPROVALS:

PROJECT PLAN: *1-87001 (HEARING DATE)
 PRELIMINARY PLAN: *1-87190 (HEARING DATE)
 SITE PLAN: *8-88046 (HEARING DATE)



VICINITY MAP
SCALE: 1"=2000'

APPLICANT

CITY PLACE
LIMITED PARTNERSHIP
1430 SPRINGHILL ROAD
SUITE 520
MCLEAN, VIRGINIA 22102

DEVELOPER

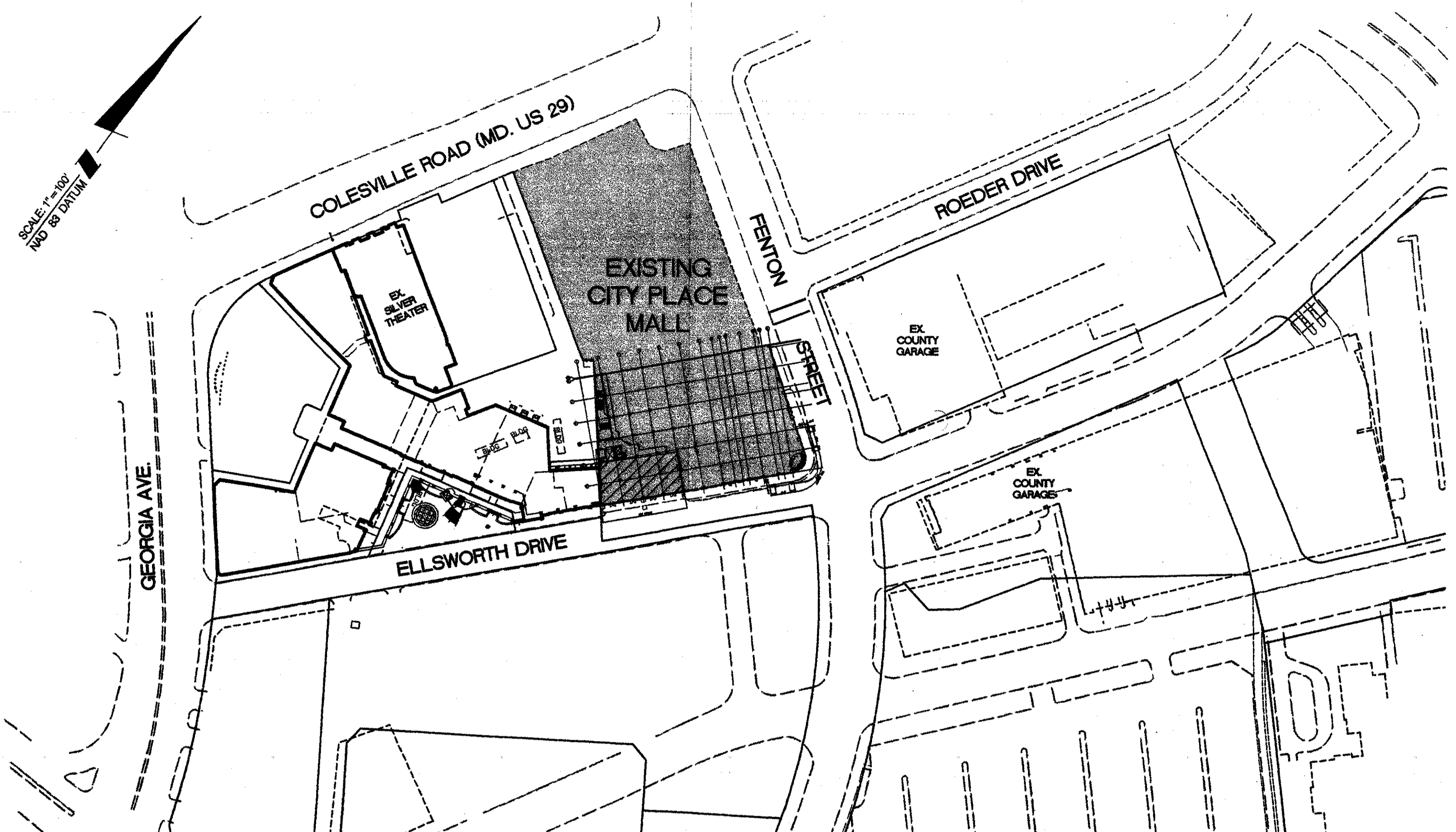
PETRIE VENTURES
C/O RAYMOND PODLASEK
170 JENNIFER ROAD
SUITE 300
ANNAPOLIS, MARYLAND 21401
410-573-3800

ENGINEER

LOIEDERMAN SOLTESZ ASSOCIATES
DANIEL E. PINO, P.E.
1390 PICCARD DRIVE
ROCKVILLE, MARYLAND 20850

RETAIL ARCHITECT

Getz Taylor Architects
a division of
Morris & Ritchie Associates, Inc.
110 West Road, Suite 245
Towson, Maryland 21284
410-821-1680



LOCATION VICINITY MAP/SITE AND ADJACENT AREAS
SCALE 1"=100'

SITE DATA

The following tables are taken from the revised application dated December 15, 1987.

PROJECT DATA TABLES

Area	Total Gross	Exclusions	FAR Gross	Permitted FAR
Lower Level Mall	92,075 s.f.	-92,075 s.f. ¹	0 s.f.	
1st Floor Mall	93,675 s.f.	-4,240 s.f. ²	89,435 s.f.	
2nd Floor Mall	88,255 s.f.	-1,790 s.f. ³	86,465 s.f.	
3rd Floor Mall	96,450 s.f.	-2,200 s.f. ³	94,250 s.f.	
4th & 5th Floors - Hechts Office @ 34,190 s.f. each	68,380 s.f.	0 s.f.	68,380 s.f.	
4th thru 13th Floors Office Tower	210,920 s.f.	0 s.f.	210,920 s.f.	
Penthouse Area	3,000 s.f.	0 s.f.	3,000 s.f.	
	652,755 s.f.	-100,305 s.f.	552,450 s.f.	552,450 s.f. ⁴

Use Breakdown

Retail	197,725 s.f.
Food	38,610 s.f.
Theaters	43,600 s.f.
Office	265,000 s.f.
Other*	107,820 s.f.
TOTAL	652,755 s.f.

1 Cellar
 2 Loading Dock
 3 Atrium Floor Openings
 4 A maximum of 6.0 FAR under the density provisions in the CBD-3 zone for commercial use produces a gross floor area of 552,450 square feet on the proposed Lot 1 area of 92,075 square feet. The gross floor area excludes the entire cellar floor, loading area, and atrium floor openings, but includes the bridge to the parking (roughly 80 x 70 feet or 4,200 feet).
 * Other Includes: Mall common area, service areas, penthouses, shafts, elevators and stairs, atrium floor openings and loading.

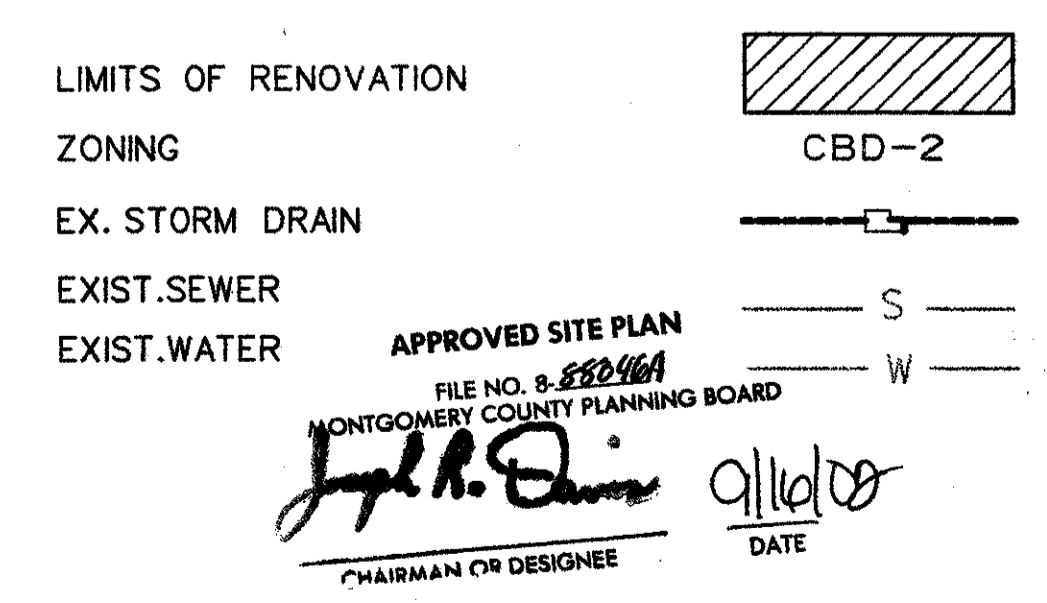
ORIGINAL APPROVED - CBD-3 ZONE STANDARDS		
CBD-3 Standards	Permitted	Proposed
1. Parcel Size, s.f. Ptn. Lot 1, CBD-3 Ptn. Lot 1, CBD-2	22,000 (min.) N/A	92,075 11,295
Net Lot Area	--	103,370
2. FAR CBD-3 CBD-2	6 (max.) N/A	5.34 0
3. Gross Floor Area, s.f. Retail Office Other Total FAR Area	-- -- -- N/A 552,450	356,175 221,444 71,146 648,765 552,450
4. Public Use Space, s.f. (20% of net lot of 92,075 s.f.) Ptn. Lot 1, Principal lot Ptn. Lot 1, Annex site Total	18,415 (min.) None 18,415 (min.)	7,260 11,295 18,555
5. Building Height, ft. CBD-3 Zone Approved Project Plan	200 (max.) 160 (max.)	N/A 158
6. Parking - none provided on-site. Payment of Parking District tax is required.		

POST KUHN PARK - CBD-3 ZONE STANDARDS		
CBD-3 Standards	Permitted	Proposed
1. Parcel Size, s.f. Ptn. Lot 1, CBD-3	22,000 (min.)	92,075
Net Lot Area	--	92,075
2. FAR CBD-3	6 (max.)	6
3. Gross Floor Area, s.f. Retail Office Other Total FAR Area	-- -- -- N/A 552,450	356,175 221,444 71,146 648,765 552,450
4. Public Use Space, s.f. (20% of net lot of 92,075 s.f.) Ptn. Lot 1, Principal lot Total	18,415 (min.) 18,415 (min.)	7,260 7,260
5. Building Height, ft. CBD-3 Zone Approved Project Plan	200 (max.) 160 (max.)	N/A 158
6. Parking - none provided on-site. Payment of Parking District tax is required.		

THIS AMENDMENT - CBD-3 ZONE STANDARDS		
CBD-3 Standards	Permitted	Proposed
1. Parcel Size, s.f. Ptn. Lot 1, CBD-3	22,000 (min.)	92,075
Net Lot Area	--	92,075
2. FAR CBD-3	6 (max.)	6
3. Gross Floor Area, s.f. Retail Office Other (includes common mall area) Total FAR Area	-- -- -- N/A 552,450	349,123 221,444 78,198 648,765 552,450
4. Public Use Space, s.f. (20% of net lot of 92,075 s.f.) Ptn. Lot 1, Principal lot Total	18,415 (min.) 18,415 (min.)	7,260 7,260
5. Building Height, ft. CBD-3 Zone Approved Project Plan	200 (max.) 160 (max.)	N/A 158
6. Parking - none provided on-site.		

No parking is proposed in the building and all of the parking needs will be accommodated in nearby existing and proposed public parking garages. In particular, short-term parking will be provided in the expansion of Garage #1 located across Fenton Street.

LEGEND



THE UNDERSIGNED AGREES TO EXECUTE ALL THE FEATURES AND REQUIREMENTS OF THIS SITE PLAN IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE MONTGOMERY COUNTY PLANNING BOARD AND THE UNDERSIGNED: DATED: 03/06/02

Raymond Podlasek
RAYMOND PODLASEK
PETRIE VENTURES
ANNAPOLIS, MARYLAND

OWNER / APPLICANT / DEVELOPER
 CITY PLACE L.P. c/o
 PETRIE VENTURES
 ATTN: RAYMOND PODLASEK
 170 JENNIFER ROAD
 SUITE 300
 ANNAPOLIS, MARYLAND 21401
 410-573-3800

MISS UTILITY NOTE
 INFORMATION CONCERNING EXISTING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS. THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND UTILITY CROSSINGS BY DIGGING TEST PITS BY HAND WELL IN ADVANCE OF THE START OF EXCAVATION. CONTACT "MISS UTILITY" AT 1-800-557-7777, 48 HOURS PRIOR TO THE START OF EXCAVATION. IF CLEARANCES ARE LESS THAN SHOWN ON THIS PLAN OR THERE ARE 30" DEEPS, WHATEVER IS LESS, CONTACT THE ENGINEER AND THE UTILITY COMPANY BEFORE PROCEEDING WITH CONSTRUCTION. CLEARANCES LESS THAN NOTED MAY REQUIRE REVISIONS TO THIS PLAN.

ELECTRONIC FILE DISCLAIMER
 THE INFORMATION CONTAINED HEREON WAS PREPARED AS AN ELECTRONIC CAD FILE BY LOIEDERMAN SOLTESZ ASSOCIATES (LSA) WHILE ALL REASONABLE STEPS HAVE BEEN TAKEN TO ASSURE THE ACCURACY OF THE INFORMATION CONTAINED IN SAID ELECTRONIC FILE, LSA CANNOT GUARANTEE THAT CHANGES AND/OR ALTERATIONS HAVE NOT BEEN MADE TO THE INFORMATION CONTAINED HEREON. PERSON SHALL BE MADE, UNLESS FIRST COMPARED TO A SOURCE ORIGINAL DOCUMENT. LSA ASSUMES NO RESPONSIBILITY AND GRANTS NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OF INFORMATION THAT HAS BEEN TRANSMITTED OR RECEIVED BY COMPUTER OR OTHER ELECTRONIC MEANS. IF VERIFICATION OF THE INFORMATION CONTAINED HEREON OR IN THE ELECTRONIC FILE USED TO CREATE THIS DOCUMENT IS NEEDED, CONTACT SHOULD BE MADE DIRECTLY WITH LSA.

SITE PLAN No. 888046A

CITY PLACE - SITE PLAN
 PARCEL A BLOCK C
 ADMINISTRATIVE AMENDMENT
 MONTGOMERY COUNTY, MARYLAND
 13TH ELECTION DISTRICT

Loiederman Soltesz Associates
 Civil Engineering
 Land Planning
 Land Surveying
 Environmental Sciences
 www.loiedermansoltesz.com

1390 Piccard Drive
Rockville, Maryland 20850
301-948-2750
Fax: 301-948-9967

4407 Forbes Boulevard
Lanham, Maryland 20706
301-794-7555
Fax: 301-794-7654

7 North Market Street
Frederick, Maryland 21701
301-496-1340
301-496-2166
Fax: 301-497-7884

4E Industrial Park Drive
Waldorf, Maryland 20602
301-370-2166
301-370-2884
Fax: 301-370-2884

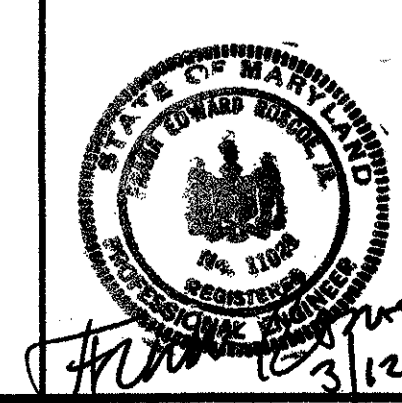
NO.	REVISIONS	BY	DATE

Copyright ADC The Map People
 Permitted Use No. 2197516

Page: 2 of 2
 Title: Site Plan
 Drawing: M-WPPC 200' Sheet
 WSSC 200' Sheet

Designed: WKC / CWV
 Checked: FER

SITE & ADJACENT AREA PLAN



PROJECT NO. 1290-00-00

SHEET 2 OF 6



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

MCPB No. 07-186
Project Plan No. 91987001A
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Division 59-D-2, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review project plan applications; and

WHEREAS, on February 2, 2007, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a project plan for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Project Plan"), on 2.48 acres of CBD-3-zoned land, on the southwest quadrant of the intersection of Colesville Road and Fenton Street, Lot 16 of the Edward W. Byrns subdivision. ("Property" or "Subject Property"); and

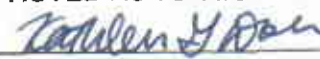
WHEREAS, the Applicant's project plan application was designated Project Plan No. 91987001A, City Place (the "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated July 11, 2007, setting forth its analysis of and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

APPROVED AS TO LEGAL SUFFICIENCY



M-NCPPC LEGAL DEPARTMENT

DATE 10/02/07

This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

MCPB No. 07-186
Project Plan No. 91987001A
City Place
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WHEREAS, on July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Bryant; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor, Commissioner Robinson being absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Project Plan No. 91987001A for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Project Plan"), on 2.48 gross acres in the CBD-3 zone, subject to the following conditions:

1. Development Ceiling
The proposed development is limited to 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space.
2. Building Height & Mass
The building height is limited to 192 feet as determined by the Montgomery County Department of Permitting Services ("DPS") standards for height measurement.
3. Public Use Space, Streetscape, & Amenities
 - a. The Applicant will provide a minimum of 20% of the net site area as on-site public use space and a minimum of 30% of the net site area as combined on-site public use space and off-site amenity space.
 - b. The public use space must be easily and readily accessible to the general public, used for public enjoyment, and open to public exercise of First Amendment rights.
 - c. The Applicant will re-pave the Fenton Street frontage to match the paving adjacent to the existing building along Ellsworth Avenue and Colesville Road. All utility grates along Fenton Street that do not require ventilation will be covered with removable brick panels, subject to approval by the relevant utility companies.
 - d. The Applicant will submit a Supplemental Plan for approval by the Art Review Panel detailing the paving, lighting, planting, site details, and artwork for the entire area of the corner mall entrance on Fenton Street and Colesville Road. Upon approval of the Supplemental Plan, the Art Review Panel will present the design to the Planning Board as a Minor Site Plan Amendment for approval and inclusion in the Certified Site Plan. The fee for this Minor Site Plan Amendment will be waived, but no use-and-occupancy permits will be granted for the office tower addition until the Supplemental Plan is approved.
 - e. The Applicant will develop and manage an art exhibition space within the bridge connecting the existing building to the public garage. A copy of the

MCPB No. 07-186
Project Plan No. 91987001A
City Place
Page 3

management plan for this space must be submitted with the Supplemental Plan and reviewed by M-NCPPC and the Art Review Panel prior to the release of any use-and-occupancy permits for the proposed office tower.

- f. The Applicant will construct the project to achieve a LEED Silver Certification. The Applicant may seek to amend this condition either through a Minor Site Plan Amendment or at the time the Supplemental Plan is reviewed by the Planning Board.
4. Staging of Amenity Features
 - a. The proposed project will be developed in one phase.
 - b. Landscaping to be installed no later than the next growing season after completion of the building and paving.
 - c. All site amenities and artwork will be installed before the issuance of any use-and-occupancy permits for the proposed office tower.
 5. Maintenance

The Applicant will maintain all on-site public use space, amenities, and artwork to be consistently clean and usable by the public. A separate maintenance program for the proposed artwork will be submitted with the Supplemental Plan.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record and all applicable elements of § 59-D-2.43, the Montgomery County Planning Board, with the conditions of approval, FINDS:

- (a) *As conditioned, the proposal complies with all of the intents and requirements of the zone.*

Intents and purposes of the CBD zones

The Montgomery County Zoning Ordinance states the purposes, which the CBD zones are designed to accomplish. The following statements analyze how the proposed Project Plan conforms to these purposes:

- (1) *"To encourage development in accordance with an adopted and approved master or sector plan, or an urban renewal plan approved under Chapter 56 by permitting an increase in density, height, and intensity where the increase conforms to the master or sector plan or urban renewal plan and the site plan or combined urban renewal project plan is approved on review by the Planning Board."*

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The Project Plan proposes to use the optional method of development and is in conformance with the Silver Spring Central Business District and Vicinity Sector Plan. The plan uses the optional method of development standards and conforms to the goals of the Sector Plan. The proposed development is an office building constructed above a retail mall. Office and commercial retail uses are permitted in the CBD-3 zone.

The proposed building height is 192 feet, which is in conformance with the Zoning Ordinance that permits buildings up to 200 feet in height under the optional method if, during site plan review, the Board finds that the height will not adversely affect surrounding properties. The Planning Board believes that there are no adverse effects on the surrounding properties, and that, in fact, the increased density and employment base will be beneficial for local businesses -- as there are no adjacent residential sites. The proposal reflects a floor area ratio ("FAR") of 5.99. The maximum allowed density is 6.0 FAR.

The Project Plan will accomplish important Sector Plan objectives. Namely, the proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street and will make downtown Silver Spring more pedestrian-friendly through the provision of streetscape improvements.

- (2) *"Permit a flexible response of development to the market as well as to provide incentives for the development of a variety of land uses and activities in central business districts to meet the needs and requirements of workers, shoppers and residents."*

The Project Plan responds to the need for an employment base in the downtown Silver Spring area. By retaining the retail space, the project will continue to meet the needs of workers, shoppers, and nearby residents.

Under the optional method, this project encourages the development of active urban streets by providing public spaces along street edges and improves the quality of the pedestrian environment within the improved streetscapes. The improved streetscape, along with the public amenities, addresses the need for public interaction to enhance the ambiance of downtown Silver Spring. This project will also increase the vitality of downtown Silver Spring and add to the economic infrastructure for commercial and retail businesses.

- (3) *"To encourage designs which produce a desirable relationship between the individual buildings in the central business district, between the buildings and*

the circulation system and between the central business district and adjacent areas.”

The proposed project has little effect on the ground-level relationships between buildings because the proposed office tower is to be built on the existing retail mall and set back from the street. But visually the office tower will become an important focal point on the Silver Spring skyline. The new office lobby and increased use of the pedestrian bridge by employees will strengthen the entire project’s relationship to existing sidewalks. There are no changes to vehicular circulation proposed by this amended Project Plan.

In all, the amended Project Plan will provide a compatible and desirable relationship with adjacent and surrounding uses. The design provides an effective relationship with adjacent uses and amenities and allows for a more interactive pedestrian environment due to the upgraded streetscape and artwork.

- (4) *“To promote the effective use of transit facilities in the central business district and pedestrian access thereto.”*

The proposed development is located two blocks from the Silver Spring Metro Station. This proximity to transit facilities as well as other downtown shopping, restaurants, and cultural establishments will help alleviate the dependency on the automobile for the employees of the development. The streetscape improvements along Fenton Street and Colesville Road will facilitate the desire for pedestrian connectivity to the metro station core areas of development within Silver Spring.

The Applicant will also provide amenities for employees commuting by bicycle and enter into a traffic mitigation agreement (“TMA”) with the Planning Board to help the project achieve the non-driver commuting goal for development in the Silver Spring CBD. The TMA will outline possible transit alternatives, monitoring of the program and commuter display information.

- (5) *“To improve pedestrian and vehicular circulation.”*

This Project Plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing the enhancement to the streetscape as prescribed in the Silver Spring Streetscape Plan (April 1992) Technical Manual, as amended, and through the inclusion of public art. Vehicular circulation is unchanged.

The streetscape improvements along Fenton Street and Colesville Road, as well as the new office tower entrance on Colesville Road, facilitate the desire for pedestrian connectivity to the bus and metro station. The streetscape improvements are being expanded along Fenton Street to complement that portion of the streetscape frontage along Colesville Road and Ellsworth Drive. The several existing entrances to the retail mall and gym provide easy pedestrian access to the site.

- (6) *"To assist in the development of adequate residential areas for people with a range of different incomes."*

The project does not propose any residential units. This is in keeping with the vision of the core area as an employment and retail center of the CBD.

- (7) *"To encourage land assembly and most desirable use of land in accordance with a sector plan."*

The Project Plan responds to the need for employment opportunities in downtown Silver Spring and addresses the need for smart growth policies where infrastructure, community facilities and elements of an urban district already exist. The project is not creating any new lots and the proposed building footprint is above an existing retail mall, thus requiring no assemblage or partition of land. The Project Plan introduces almost 300,000 square feet of office space into an existing framework of commercial, retail, and cultural uses in downtown Silver Spring, further encouraging revitalization in the CBD.

Further intents of the CBD-3 Zone

Section 59-C-6.213(b) of the Zoning Ordinance states that it is further the intent that the CBD-3 zone to:

"Foster and promote the orderly development of the CBDs of the county so that these areas will enhance the economic status of the county as well as providing an expanding source of employment and living opportunities for its citizens in a desirable urban environment."

The proposed development will enhance the economic status of the county by providing additional employment opportunities within the core area of the Silver Spring CBD. Increasing the employment base through the addition of almost 300,000 square feet of office space will expand the CBD workforce in an area that is currently expanding other retail and residential opportunities. Further, the

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renovation of the streetscape and public artwork will enhance the urban environment for all of the county's citizens and visitors.

Requirements of the CBD-1 Zone

The following data table demonstrates the conformance of the Project Plan with the development standards under the optional method of development.

PROJECT DATA TABLE FOR CBD-1 ZONE

Development Standard	Permitted/ Required	Previously Approved	Proposed
Gross Tract Area (square feet):	18,000	103,370	108,144
Net Site Area ² (square feet):	N/A	103,370 ³	91,248 ⁴
Floor Area Ratio (FAR)6.0		5.34	6.0
Building Height (feet): 143/200 ⁵		158	192
Public Use Space (% of net lot area):			
On-Site	20% (18,250 SF)	20.1% (18,555 SF)	22.5% (20,216 SF) ⁶
Off-Site			5.7% (5,181 SF)
Total			28.2% (25,397 SF)
Parking	1822	none	none ⁷

Amenities and Facilities Summary

On-Site Improvements

² Net Site Area is calculated after the dedication of 16,896 square feet of previous recorded dedications on Plat Numbers 17983, 1602, and 2717.

³ Including Kughn Park at 11,295 square feet.

⁴ Reflects additional previous dedications of 16,896 square feet.

⁵ The Zoning Ordinance permits buildings up to 143 feet normally or up to 200 feet in height under the optional method if, during site plan review, the Board finds that the additional height will not adversely affect surrounding properties.

⁶ Including 11,295 credits for Kughn Park.

⁷ The proposed development is within the Silver Spring Parking District and is not required to provide any parking on site; however, the project is subject to the Parking District Tax.

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- ξ Renovation of corner entrance plaza at Fenton Street and Colesville Road including new public art feature, paving, landscaping, and lighting.
- ξ Installation of art display area in the pedestrian bridge to the public parking garage.
- ξ New entry plaza and lobby to the proposed office tower.

Off-Site Improvements

- ξ Replacement of brick paving along Fenton Street with herringbone pattern to match existing sidewalks along Ellsworth Drive and Colesville Road frontages.
- ξ Removal of metal utility grates along Fenton Street, whenever possible subject to utility company approvals.
- ξ Contribution of \$250,000 for public amenities to be determined by M-NCPPC.

(b) *The proposal conforms to the approved and adopted Master or Sector Plan or an Urban Renewal Plan approved under Chapter 56.*

Zoning and Land Use

The 91,248 square foot property is zoned CBD-3. The approved Sector Plan recommended CBD-3 zoning for this site and this zoning was applied through the Sectional Map Amendment adopted on July 18, 2000 per County Council Resolution 14-600. The zone permits up to 6.0 FAR, which is the maximum proposed under the subject Application.

In 1988 and 1989 the Planning Board approved project and site plans for City Place that provided for the construction of a shopping mall with an office building over it, up to a maximum of height of 158 feet. These approvals stipulated that construction of the office tower must commence within four years following the occupancy of the retail mall, or within one year of certain intersection improvements. Since this did not occur, the approval of the office tower expired.

The original application included a 2,000 square foot lower level atrium as part of the required public use space, subject to certain conditions. It also included an area known as "the annex site" within the proposed public use space. The finished public space at the annex site, renamed Kughn Park, was acquired by Montgomery County for a financial consideration as part of the Downtown Silver Spring Urban Renewal project.

The proposed development calls for a 299,307 square foot office building on top of the existing City Place Mall. The vacant movie theaters on the top of the mall would be converted to office space. The resulting building would be 192 feet

tall; however, it would be stepped back from Colesville Road in accordance with the original City Place approvals, which called for the 160-foot office tower to “be stepped back as much as possible so as to avoid conflict with the pedestrian scale of Colesville Road.” Primary public access to the new office building would be through a new entrance on Colesville Road. No parking is proposed on-site to serve the proposed use.

As part of the Application, the Applicant has proposed to redesign the existing public space at the intersection of Colesville Road/Fenton Street to make it more useful and inviting. They have also proposed to improve the streetscaping along Fenton Street and are counting this as part of their off-site amenity package.

Sector Plan Conformance

The Silver Spring Central Business District Sector Plan outlines six themes, which articulate the shared goals and vision for a revitalized Silver Spring. Three of these themes apply to the proposed project:

- ③ A commercial downtown,
- ③ A pedestrian-friendly downtown, and
- ③ A transit-oriented downtown.

The proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street. It will make the downtown more pedestrian-friendly through the provision of streetscape improvements.

- (c) *Because of its location size, intensity, design, operational characteristics and staging, it would be compatible with and not detrimental to existing or potential development in the general neighborhood.*

The project is complementary to the range of commercial and cultural uses of the surrounding neighborhood. The design and scale of the project, pedestrian and vehicular circulation, and improvements to the streetscape provide an enhanced and interactive relationship with the core of downtown Silver Spring. The surrounding and adjacent properties are a mix of different uses, building heights and massing that is integral to the vitality of an urban downtown area. The proposed development is compatible with the existing development occurring in downtown Silver Spring and encourages redevelopment of nearby properties in the CBD.

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- (d) *As conditioned, the proposal would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.*

The project proposes office uses amid an existing context of commercial, residential, and cultural uses within the downtown Silver Spring area. Because the site is located within the Silver Spring Parking District, parking for the proposed office tower will be provided in local parking lots and garages. This parking arrangement was previously approved during the original project plan approval for the provision of 1,824 spaces. If parking were required, 2,390 spaces would be necessary.

The Planning Board believes the Applicant is promoting smart growth within the urban environment by providing bicycle facilities and developing near the existing Silver Spring Metro Station and will, therefore, not overburden existing public services by the proposed project. In addition, the improvements that are being made to the streetscape facilitate and encourage pedestrian accessibility to the metro station and encourage the future employees and retail patrons to take advantage of existing infrastructure.

- (e) *The proposal will be more efficient and desirable than could be accomplished by the use of the standard method of development.*

The optional method of development permits a more efficient and desirable development than can be obtained using the standard method of development. The Project Plan proposes to use the optional method of development and is in conformance with the goals and objectives of the Silver Spring Sector Plan. The proposed development intends to maximize its total floor area on site to 739,269 square feet, including 91,772 square feet of cellar space. In return for this increased density, the project will include a significant new public use space and art amenity at the corner of Colesville Road and Fenton Street as well as other amenities on site as detailed above.

- (f) *The proposal will include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

There is no proposed residential development.

- (g) *As conditioned, the proposal satisfies any applicable requirements for forest conservation under Chapter 22A.*

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The Property is exempt from forest conservation requirements.

(h) *As conditioned, the proposal satisfies any applicable requirements for water quality resources protection under Chapter 19.*

The Applicant has been granted an exemption from additional stormwater management requirements.

BE IT FURTHER RESOLVED that all elements of the plans for Project Plan No. 91987001A, City Place, stamped received by M-NCPPC on July 11, 2007 are required except as modified herein; and

BE IT FURTHER RESOLVED that this Project Plan shall remain valid as provided in Montgomery County Code § 59-D-2.7; and

BE IT FURTHER RESOLVED that the date of this Resolution is OCT 16 2007 (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).

* * * * *

At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Project Plan No. 91987001A, City Place.


Royce Hanson, Chairman
Montgomery County Planning Board



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

MCPB No. 07-176
Preliminary Plan No. 11987190A
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on August 16, 2006, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would amend a previously approved preliminary plan that created one lot on 2.48 acres of land located in the southeast quadrant of the intersection of Colesville Road and Fenton Street ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11987001A, City Place ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board Staff ("Staff") issued a memorandum to the Planning Board, dated July 3, 2007, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]

M-NCPPC LEGAL DEPARTMENT

DATE 10/02/07

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

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WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 26, 2007, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Lynch; seconded by Commissioner Bryant; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor; Commissioner Robinson absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 11987190A to amend a previously approved preliminary plan that created one lot on 2.48 acres of land located in the southeast quadrant of the intersection of Colesville Road and Fenton Street ("Property" or "Subject Property"), in the Silver Spring CBD Sector Plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one lot for 299,307 square feet of office space and 439,962 square feet of retail space, for a total building area of 739,269 square feet, including 91,772 square feet in cellar space.
- 2) Final approval of the number and location of buildings, site circulation, sidewalks, and other improvements will be determined at site plan approval.
- 3) No clearing, grading or recording of plats may take place prior to certified site plan approval.
- 4) The Applicant must dedicate all road rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Master Plan unless otherwise designated on the Preliminary Plan.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation ("DPWT") letter dated March 13, 2007, unless otherwise amended.
- 6) The Applicant must provide access and improvements as required by DPWT prior to recordation of the record plat.
- 7) At time of site plan approval, bicycle storage and other bicycle accommodations must be provided as recommended to encourage non-automobile transportation for the site.
- 8) Other necessary easements must be shown on the record plat.
- 9) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

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

The Silver Spring Central Business District Sector Plan recommends that the Subject Property be zoned CBD-3, which was accomplished through a Sectional Map Amendment in July 2000. The proposed subdivision complies with the recommendation adopted in the sector plan in that three of the goals for revitalizing Silver Spring listed in the sector plan are supported by the project: a commercial downtown, a pedestrian-friendly downtown, and a transit-oriented downtown. The proposed project expands the employment base in the downtown and does so in proximity to transit facilities. It encourages active urban streets by providing building entrances on Colesville Road and Fenton Street. It will make the downtown more pedestrian-friendly by providing streetscape improvements.

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

According to the traffic study submitted in March 2007, the table below shows the number of peak-hour vehicular trips generated by the proposed land uses during the weekday morning and evening peak periods, 6:30 to 9:30 AM and 4:00 to 7:00 PM. Trips generated by the existing portion of the mall are accounted for in the existing traffic counts reported in the study.

Table 1 - Trip Generation of Additional development

Proposed Land Uses	Proposed	Weekday Peak-Hour Trips	
		AM	PM
Office	290,000 SF	406	406
Retail (Removal)	40,000 SF	- 20	-80
Total Vehicular Trips Proposed		386	326

In the traffic study, the table below shows the resulting Critical Lane Volume (CLV) values for the existing, background, and the total future traffic conditions. The background traffic condition includes existing traffic plus traffic generated by approved developments.

Table 2 - Results of Intersection Capacity Analysis

Intersection	Weekday Peak-Hour	Traffic Condition		
		Existing	Background	Total
1. Georgia Avenue (MD97) & Spring Street	AM	1,176	1,221	1,264
	PM	1,080	1,242	1,284
2. Georgia Avenue (MD97) & Cameron Street	AM	1,081	1,201	1,220
	PM	866	927	973
3. Colesville Road (US29) & Georgia Avenue (MD97/US29)	AM	1,372	1,423	1,436
	PM	910	961	963
4. Georgia Avenue (US 29) and Wayne Avenue	AM	1,196	1,281	1,290
	PM	1,301	1,349	1,367
5. Georgia Avenue (US 29) and Bonifant Street	AM	997	1,064	1,065
	PM	1,017	1,063	1,063
6. Georgia Avenue (US 29) and Silver Spring Avenue	AM	659	697	698
	PM	772	808	808
7. East-West Hwy (MD410) & Colesville Road (MD384)	AM	1,127	1,133	1,158
	PM	1,610	1,627	1,628
8. Colesville Road (US29) and Wayne Avenue	AM	880	902	906
	PM	792	814	832
9. Colesville Road (US29) & Fenton Street	AM	943	987	1,039
	PM	1,038	1,079	1,132
10. Colesville Road (US 29) and Spring Street	AM	1,123	1,251	1,294
	PM	1,248	1,289	1,343
11. Fenton Street and Cameron Street	AM	473	588	595
	PM	644	683	733
12. Fenton Street and Ellsworth Drive	AM	419	483	498
	PM	678	714	807
13. Fenton Street and Wayne Avenue	AM	842	888	907
	PM	1,060	1,102	1,111
14. Fenton Street and Bonifant Street	AM	684	707	710
	PM	849	874	889
15. Fenton Street and Thayer Avenue	AM	719	749	752
	PM	878	914	929
16. Spring Street and Cameron Avenue	AM	638	836	853
	PM	1,074	1,348	1,350
17 Cedar Street and Ellsworth Drive	AM	195	285	303
	PM	368	444	505

As noted in the table, the weekday peak-hour CLV at all of the study intersections are below the Silver Spring CBD Policy Area congestion standard of 1,800.

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- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. Access and public facilities will be adequate to support the proposed lot and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lots were reviewed for compliance with the dimensional requirements for the CBD-3 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Preliminary Plan.

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

The site contains no environmentally sensitive areas or natural resources, and the application is exempt from the Forest Conservation Law.

- 5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("DPS") that the Stormwater Management Concept Plan meets DPS' standards.*

The Application is exempt from stormwater management requirements, based on a memo from DPS dated March 6, 2007.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) 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 among the Montgomery County Land Records or a request for an extension must be filed; and

OCT 16 2007 BE IT FURTHER RESOLVED, that the date of this Resolution is (which is the date that this Resolution is mailed to all parties of record); and

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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).

* * * * *

At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Preliminary Plan No. 11987190A, City Place.



Royce Hanson, Chairman
Montgomery County Planning Board



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

MCPB No. 07-185
Site Plan No. 81988046B
City Place
Date of Hearing: July 26, 2007

OCT 16 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review site plan applications; and

WHEREAS, on August 16, 2006, City Place Air Rights, LLC ("Applicant"), filed an application for approval of a site plan for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot ("Site Plan" or "Plan"), on 2.48 acres of CBD-3-zoned land, on the southwest quadrant of the intersection of Colesville Road and Fenton Street, Lot 16 of the Edward W. Byrns subdivision ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 81988046B, City Place (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 11, 2007, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on July 26, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on July 26, 2007, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 26, 2007 the Planning Board approved the Application subject to conditions on the motion of Commissioner Lynch, seconded by Commissioner Bryant, with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Lynch voting in favor, Commissioner Robinson being absent.

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC LEGAL DEPARTMENT

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

DATE 10/02/07 www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 81988046B for a total of 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space on one existing lot, on 2.48 acres of CBD-3-zoned land subject to the following conditions:

1. Project Plan Conformance
The proposed development shall comply with the conditions of approval for Project Plan No. 91987001A.
2. Preliminary Plan Conformance
The proposed development shall comply with the conditions of approval for Preliminary Plan No. 11987190A.
3. Supplemental Plan
The Applicant will submit a Supplemental Plan to the Art Review Panel for approval, which will then be submitted as a Minor Site Plan Amendment to the Planning Board for approval before the issuance of any use-and-occupancy permits for the office tower addition. The Supplemental Plan is limited to the pedestrian area from the northern retail entrance to Fenton Street and Colesville Road. Upon approval by the Art Review Panel, the Supplemental Plan will be presented to Staff as a Minor Site Plan Amendment for inclusion in the Certified Site Plan. The Supplemental Plan will include complete layout and details of the following items:
 - a. Public artwork design and maintenance program.
 - b. Landscaping and lighting layout, details, and photometrics.
 - c. Structure and paving layout and details.
 - d. Site details and amenities.
4. Lighting
Deflectors shall be installed on all fixtures within the property boundaries causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent roads.
5. Maintenance Responsibility
The Applicant shall be responsible for maintaining all on-site public use space and all public amenity features.
6. Transportation
 - a. Total development under the Site Plan is limited to 739,269 square feet of retail and office space.
 - b. The Applicant must provide two inverted-U bike racks at each of the four main entrances to the office and retail portion for a total of eight on site and a storage area for ten bicycles within the office entrance.

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- c. The Applicant must provide *four showers accessible to office employees who bicycle or walk to work.*

7. Historic Preservation
Architectural modifications are limited to non-historic buildings. Specifically, no alterations of The Hecht Company building are permitted.

9. Public Amenity Contribution
In lieu of providing off-site public amenity space or facilities, the Applicant will make a contribution to M-NCPPC toward parkland acquisitions or improvements or other public amenities or facilities in the Silver Spring CBD in the amount of \$250,000.

10. Development Program
The Applicant must construct the proposed development in accordance with the Development Program. A Development Program will be reviewed and approved by Staff prior to approval of a Certified Site Plan. The Development Program will include a phasing schedule as follows:
 - a. Landscaping associated with each pedestrian area will be completed as construction is completed.
 - b. Pedestrian seating areas associated with each area will be completed as construction is completed.
 - c. Phasing of dedications, site amenities, artwork installation, trip mitigation or other features.

11. Certified Site Plan
Prior to approval of the Certified Site Plan, the following revisions must be included and/or information provided, subject to Staff review and approval:
 - a. Development program, inspection schedule, and Site Plan Resolution.
 - b. Limits of disturbance.
 - c. Revised development tabulations and phasing narrative.
 - d. Revised public use space table and calculations.

BE IT FURTHER RESOLVED that all site development elements as shown on City Place drawings stamped by the M-NCPPC on July 11, 2007, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

MCPB No. 07-185
 Site Plan No. 81988046B
 City Place
 Page 4

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

As conditioned, the proposed Site Plan Amendment is consistent with the concurrent proposed Project Plan Amendment with respect to Sector Plan conformance, architectural and streetscape details, and inclusion of public use space and amenities.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

As amended in accordance with recommended conditions, the Site Plan meets all of the requirements of the CBD-3 zone as demonstrated in the following project Data Table.

PROJECT DATA TABLE FOR CBD-3 ZONE

Development Standard	Permitted/ Required	Previously Approved	Approved by the Planning Board
Gross Tract Area (square feet):	18,000	103,370	108,144
Net Site Area ¹ (square feet):	N/A	103,370 ²	91,248 ³
Floor Area Ration (FAR)	6.0	5.34	6.0
Building Height (feet):	143/200 ⁴	158	192
Public Use Space (% of net lot area):			
On-Site	20% (18,250 SF)	20.1% (18,555 SF)	22.5% (20,216 SF) ⁵
Off-Site			5.7% (5,181 SF)
Total			28.2% (25,397 SF)
Parking	1822	none	none ⁶

¹ Net Site Area is calculated after the dedication of 16,896 square feet of previous recorded dedications on Plat Numbers 17983, 1602, and 2717.

² Including Kughn Park at 11,295 square feet.

³ Reflects additional previous dedications of 16,896 square feet.

⁴ The Montgomery County Zoning Ordinance permits buildings up to 143 feet normally or up to 200 feet in height under the optional method if, during site plan review, the Board finds that the additional height will not adversely affect surrounding properties.

⁵ Including 11,295 credits for Kughn Park.

⁶ The proposed development is within the Silver Spring Parking District and is not required to provide any parking on-site; however, the project is subject to the Parking District Tax.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Locations of buildings and structures

The proposed office tower will be built according to the setbacks approved by the previous project and site plans. This footprint is determined, in part, by the structural engineering of the existing retail mall. When built, the office tower will become a dominant feature in the Silver Spring CBD and is detailed and massed accordingly.

Open Spaces

The plan proposes 28.2 percent of the net property as public use and amenity space. This space is distributed between the existing façade and the property line, within the retail mall, within the pedestrian bridge and along the Fenton Street right-of-way. The open space along the sidewalks will continue to provide shade and efficient access into and around the site. The interior amenity space will continue to be programmed with activities for local citizens and the pedestrian bridge will be enhanced as a space for local artists to display their work. The corner area of Colesville Road and Fenton Street that is subject to the Supplemental Plan will provide a cultural landmark, visual interest, and improved pedestrian circulation patterns.

Landscaping and Lighting

The existing street trees and lights will remain. The office tower entry will feature a mix of container plantings, light fixtures, and benches. These landscape features will provide interest and beauty and the lighting will provide safety within and around the entrance court during the night. The corner of Colesville Road and Fenton Street will provide a combination of lighting, landscaping, new paving patterns, and public art that will provide visual interest, enhanced circulation patterns, and a landmark focal point for the community.

Recreation Facilities

There are no recreation facilities required or provided on-site.

Pedestrian and Vehicular Circulation Systems

Vehicular access will not change from the approved existing circulation pattern.

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Site Plan No. 81988046B
City Place
Page 6

Sidewalks along Colesville Road and Ellsworth Drive will not change. Fenton Street will be renovated with new brick pavers in a pattern to match the existing frontages along Colesville Road and Ellsworth Drive. Further, pedestrian circulation around the corner of Colesville Road and Fenton Street will be improved through the Supplemental Plan approval.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed structure is compatible with other uses in and around the subject site and with the adjacent development patterns and scale. The proposed use of office space complements the surrounding uses by providing a center of employment within an existing retail and cultural urban context.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The site is exempt from forest conservation requirements and additional stormwater management approvals.

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-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this Resolution is OCT 16 2007 (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).

At its regular meeting, held on Thursday, October 4, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Lynch, seconded by

MCPB No. 07-185
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Commissioner Cryor, with Commissioners Hanson, Bryant, Cryor, and Lynch voting in favor, and Commissioner Robinson abstaining, ADOPTED the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 81988046B, City Place.



Royce Hanson, Chairman
Montgomery County Planning Board



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Memorandum

TO: Rollin Stanley, Planning Director

FROM: Rose Krasnow, Chief of Development Review *RK*

VIA: Robert Kronenberg, Supervisor, Development Review *RAK*
Joshua Sloan, Coordinator, Development *JAS*

RE: City Place
SITE PLAN #81988046C

DATE: May 13, 2008

Pursuant to Montgomery County Code Division 59-D-3.7 (Minor Amendments), the Planning Director may approve in writing any application for an amendment to the Certified Site Plan. Administrative or "Director Level" Amendments are modifications to the approved Certified Site Plan that are considered minor in nature and do not alter the intent and objectives of the plan.

A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the DRD Intake Section is also not required; however, submittal of the application to DRD is applicable. Administrative Amendments must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a) (ii) of the Development Manual and require approval of the Planning Director.

On April 11, 2008, Petrie Ross Ventures ("Applicant"), filed a site plan amendment application designated Site Plan No. 81988046C ("Amendment") for approval of the following modifications:

1. Removal of one street tree to relocate a bus shelter. The existing location of the bus shelter, near the corner of Fenton Street and Colésville Road, is too close to an outdoor café area and within an area currently being designed for public art and open space.

A notice regarding the subject site plan amendment was sent to all parties of record by the Applicant on April 15, 2008. The notice gave the interested parties 15 days to review and comment on the contents of the amended site plan. Staff received one inquiry via email regarding the location and reason from removal, but no objections were received.

The proposed amendment is consistent with the provisions of Section 59-D-2.6 of the Montgomery County Zoning Ordinance for Minor Plan Amendments. The amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board for the originally approved site plan.

This Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8. The Applicant is responsible for submitting a certified site plan after approval by the Director for the specific modifications.

ACCEPTED & APPROVED BY:



Rollin Stanley, Planning Director

5-14-08

Date Approved



MAR 30 2010

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

MCPB No. 10-27
Site Plan No. 81988046D
Project Name: City Place
Hearing Date: March 4, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on January 4, 2010, City Place Air Rights, LLC and City Place Limited Partnership ("Applicant"), filed a site plan amendment application designated 81988046D, City Place (the "Amendment") for approval of the following modifications:

1. Retention of Fenton Street streetscape;
2. Approval of new sidewalk/entrance design at the corner of Fenton Street and Colesville Road;
3. Replacement of the variety of street trees along Colesville Road;
4. Removal of one street tree on Colesville Road; and
5. Architectural modifications.

WHEREAS, on October 11, 1988, site plan 819880460 was approved for 234,050 square feet of office space and 298,455 square feet of retail space; and

WHEREAS, on October 16, 2007, site plan amendment 81988046B was approved for 647,497 square feet of gross floor area and 91,772 square feet of cellar area for retail and office space with minor architectural and site modifications; and

WHEREAS, on May 14, 2008, site plan amendment 81988046C was approved for the removal of one tree and the relocation of a bus shelter; and

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

MCPB No. 10-27
Site Plan No. 1988046D
City Place
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WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated February 22, 2010, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on March 4, 2010, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on March 4, 2010, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Wells-Harley, seconded by Commissioner Dreyfuss, with a vote of 4-0; Commissioners Alfandre, Dreyfuss, Hanson, and Wells-Harley voting in favor, Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby APPROVES the Site Plan No. 81988046D; and

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Site Plan Conformance
The proposed development must comply with the conditions of approval for Site Plan 81988046C as listed in the Planning Board resolution dated May 14, 2008 except as modified herein.
2. Pedestrian Circulation
The Applicant must finalize the construction of the handicapped ramp to Colesville Road in accordance with the existing detail.
3. Display of Public Information and Events
The Applicant must enter into an agreement with the Urban District, or other appropriate agency or organization, to televise event calendars and public information on the "JumboTron" for a minimum of 5 minutes per hour that the screen is on. This agreement must be executed prior to the issuance of any building permit.

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4. Fenton Street Streetscape

The Applicant may retain the existing sidewalk paving on Fenton Street but must cover any utility grates that do not require ventilation with removable brick panels, subject to approval by the relevant utility companies.

5. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Replacement of the street lamp and sidewalk modifications must be installed within six months after structural construction is completed. Street tree planting may wait until the next growing season.
- b. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any new office building occupancy permit.
- c. The development program must provide phasing for installation of on-site landscaping and lighting.
- d. The development program must provide phasing of the required features.

6. Certified Site Plan

Prior to 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 final forest conservation exemption letter, stormwater management exemption letter, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Ensure consistency of all details and layout between site plan and landscape plan.
- c. Minor modifications to layout and notations upon Staff's request.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that all site development elements as shown on City Place drawings stamped by the M-NCPPC on January 4, 2010, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

MCPB No. 10-27
Site Plan No. 1988046D
City Place
Page 4

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

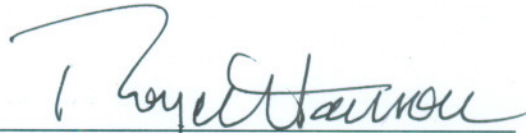
~~MAR 30 2010~~ BE IT FURTHER RESOLVED, that the date of this written resolution is (which is the date that this resolution is mailed to all parties of record); and ~~MAR 30 2010~~

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 written opinion, 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 Presley, seconded by Commissioner Wells-Harley, with Commissioners Hanson, Wells-Harley, Alfandre, and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, March 18, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Memorandum

TO: Gwen Wright, Planning Director

FROM: Robert Kronenberg, Acting Chief, Area One *RK*
AB

VIA: Neil Braunstein, AICP, Planner Coordinator, Area One

RE: City Place
SITE PLAN #81988046E

DATE: December 27, 2013

Pursuant to Montgomery County Code Division 59-D-3 (Minor Amendments), the Planning Director may approve in writing certain applications for an amendment to the certified site plan. Administrative or "Director Level" Amendments are modifications to the approved Certified Site Plan that are considered minor in nature and do not alter the intent and objectives of the plan.

A Pre-Application meeting with the community/public/parties of record is not required. A Pre-Submittal meeting with the Intake Section is also not required; however, submittal of the application to the Intake Section is applicable. Administrative Amendments must satisfy the noticing and posting requirements as identified in Sections 4.C and 4.D (a) (ii) of the Development Manual and require approval of the Planning Director.

On August 13, 2013, Silver Spring Retail, LLC ("Applicant") filed a site plan amendment application designated Site Plan No. 81988046E ("Amendment") for approval of the following modifications:

1. New site elements:
 - a. Façade improvements.
 - i. Exterior signage.
 - ii. Exterior lighting.
 - iii. Entry doors and steps.
 - b. Revised public use space and public amenity space.
 - i. Sidewalk paving material.
 - ii. Trash receptacles.
 - iii. Bike racks.
 - iv. Flower pots.
 - v. Concrete paving.

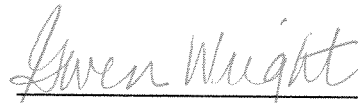
- vi. Outdoor dining terrace.
- c. Revised public use space – from 22.6% to 22.3% (20% required).

A notice regarding the subject site plan amendment was sent to all parties of record by the Applicant on August 14, 2013. The notice gave the interested parties 15 days to review and comment on the contents of the amended site plan. Staff did not receive any correspondence from the parties of record.

The proposed amendment is consistent with the provisions of Section 59-D-2.6 of the Montgomery County Zoning Ordinance for Minor Plan Amendments. The amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board for the originally approved site plan.

This Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8. The Applicant is responsible for submitting a new certified site plan reflecting the specific modifications after approval by the Director.

ACCEPTED & APPROVED BY:



Gwen Wright, Planning Director



Date Approved



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 17-116
Site Plan No. 81988046F
Ellsworth Place (formerly City Place)
Hearing Date: December 14, 2017

JAN 12 2018

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, under Section 59.7.7.1.B.3.a., the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on October 16, 2007, the Planning Board, by Resolution MCPB No. 07-185, approved City Place, Site Plan No. 81988046B, for 299,307 square feet of office space and 439,962 square feet of retail space, as well as 91,772 square feet of cellar area devoted to retail uses, on 2.48 acres of CBD-3-zoned-land, located south of Fenton Street, between Colesville Road and Ellsworth Drive ("Subject Property"), in the Silver Spring CBD Sector Plan ("Sector Plan") area; and

WHEREAS, on May 14, 2008, the Planning Director administratively approved Site Plan No. 81988046C to remove one tree and relocate a bus shelter on the Subject Property; and

WHEREAS, on March 4, 2010, the Planning Board approved Site Plan No. 81988046D (MCPB No. 10-27) to address architectural and streetscape and entry-related modifications on the Subject Property; and

WHEREAS, on January 2, 2014, the Planning Director administratively approved Site Plan No. 81988046E to address façade improvements and revisions to public use and amenity space on the Subject Property; and

WHEREAS, on October 25, 2017, Chris Duffy ("Applicant"), filed an application for approval of an amendment to the previously approved site plans in response to an Administrative Citation, No. SP004, for continued non-compliance with the Certified Site

Approved as to

Legal Sufficiency

A handwritten signature in blue ink, likely belonging to a member of the MNCPPC Legal Department.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320

MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

MCPB No. 17-116
Site Plan No. 81988046F
Ellsworth Place (formerly City Place)
Page 2

Plan 81988046E, dating back to an original Notice of Non-Compliance from May 25, 2016, for approval of the following modifications:

- 1) Update plans to show size and current location of all planter boxes, trash cans, lighting, landscaping, and entrance amenities;
- 2) Add notes to the plans to indicate which items relate to the future office tower development;
- 3) Replace existing installed bike racks with County standard "U" shaped rack and update plans accordingly.

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 81988046F, Ellsworth Place ("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 December 1, 2017, setting forth its analysis, and recommendation for approval, of the Application ("Staff Report"); and

WHEREAS, on December 14, 2017, Staff presented the Amendment to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Amendment subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 81988046F, with all site development elements shown on the latest electronic version of Ellsworth Place, Site Plan 81988046F, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required.

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

BE IT FURTHER RESOLVED that, having fully considered the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, the Montgomery County Planning Board finds that this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments, and that all findings remain in effect; and

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 Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and


BE IT FURTHER RESOLVED, that the date of this written resolution is JAN 12 2018 (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 written opinion, 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, January 11, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-103
Preliminary Plan No. 11987190C
Ellsworth Place (formerly City Place)
Date of Hearing: November 10, 2022

NOV 30 2022

RESOLUTION

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

WHEREAS, on August 11, 1988, the Planning Board, by Opinion mailed on October 26, 1988, approved Preliminary Plan No. 119871900, creating two lots (lots 16 & 17) on 2.46 acres of land in the CBD-3 (CR-8.0, C-6.0, R-7.5, H-200T) zone, located on Fenton Street between Colesville Road and Ellsworth Drive, in the Silver Spring CBD Policy Area and 1975 Silver Spring CBD Sector Plan ("Sector Plan") area; and

WHEREAS, on July 26, 2007, the Planning Board approved Preliminary Plan Amendment No. 11987190A (MCPB No. 07-176) to increase the density allowed on lot 16 ("Subject Property"); and

WHEREAS, on June 20, 2022, VIKA on behalf of Avante Ellsworth Ventures, LLC ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the approved Adequate Public Facilities validity period by 30 months (2.5 years) per Section 50.4.3.J.7.d of the Subdivision Ordinance, with Waiver of the 60 percent requirement of Section 50.4.3.J.7.d.i(c)(2) on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 11987190C¹, Ellsworth Place ("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

¹ An application was accepted on July 1, 2020, assigned Preliminary Plan Amendment No. 11987190B, to request an APF extension and was subsequently withdrawn after the adoption of SRA No. 20-01 which automatically extended the APF validity period an additional two years.

MCPB No. 22-103
Preliminary Plan No. 11987190C
Ellsworth Place (formerly City Place)
Page 2

Planning Board, dated October 28, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 10, 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 Hill, seconded by Vice Chair Presley, with a vote of 4-0; Chair Zyontz, Commissioners Branson, Hill and Presley voting in favor with Commissioner Piñero absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 11987190C to extend the approved Adequate Public Facilities validity period by 30 months (2.5 years) per Section 50.4.3.J.7.d of the Subdivision Ordinance, with Waiver of the 60 percent requirement of Section 50.4.3.J.7.d.i(c)(2) by modifying Condition 9 of Preliminary Plan Amendment No. 11987190A and adding Conditions 10 and 11 as follows:²

MODIFIED CONDITION:

9. The Adequate Public ~~Facilities~~ (“APF”) review for the Preliminary Plan will remain valid for ~~sixty one (61) months~~ 30 months (2.5 years) from the date of expiration of the prior APF validity period (November 16, 2022) or until May 16, 2025.

NEW CONDITIONS:

10. Before the certification of Preliminary Plan Amendment No. 119871910C, the Applicant must revise the phasing as identified in Preliminary Plan Amendment No. 119871910C.
11. Before the issuance of any permits for Phase III, the Applicant must submit and receive approval for an amendment to Site Plan Amendment No. 81988046F.

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 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:

² 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.

MCPB No. 22-103
Preliminary Plan No. 11987190C
Ellsworth Place (formerly City Place)
Page 3

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

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

d) Adequate Public Facilities Extension

50.4.3.J.7.a.i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.

The Application for Preliminary Plan Amendment No. 11987190C was accepted on June 30, 2022, before the APF validity period expiration on November 16, 2022.

- ii. ***The applicant must submit a new development schedule or phasing plan for completion of the project for approval.***

With this Preliminary Plan Amendment and APF extension request, the Applicant proposes to modify the previously approved phasing from 2 phases to 3 phases as follows:

Phase I: up to 491,235 square feet of existing retail space including a potential theatre and a cellar space of 91,772 square feet resulting in a gross floor area of 399,463 square feet.

Phase II: up to 491,235 square feet of development consisting of 439,962 square feet of retail space, and up to 51,273 square feet of office space, including a cellar space of 91,772 square feet, maintaining a gross floor area of 399,463 square feet. The theater may or may not be converted to office space in the future pursuant to this approval, but the footprint of the building will not change whether the theater is used as office space or retail space.

Phase III: completion of the approved maximum development of 739,269 square feet (647,497 square feet of gross floor area) including up to 439,962 square feet of retail space (which includes 91,772 square feet of cellar space), and up to 299,307 square feet of office space.

As the development currently exists today, it is within Phase II: the existing mall and office lobby have been constructed totaling 344,498 square feet of gross floor area

MCPB No. 22-103
Preliminary Plan No. 11987190C
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Page 4

(GFA). State of Maryland Department of Assessments and Taxation (SDAT) records show a total of 436,270 square feet of building, which includes 91,772 square feet of cellar space that by definition is not counted towards GFA.

The Applicant states the APF extension of 30 months (2.5 years) will allow the Applicant to determine how to move forward with Phase III given the changes in market demand. The Application has been conditioned to require the Applicant to update the phasing within the Preliminary Plan sheets and submit a Site Plan Amendment before the start of Phase III.

iii. ***For each extension of an adequate public facilities determination:***

(a) the applicant must not propose any additional development above the amount approved in the original determination;

No additional development is proposed as part of this Preliminary Plan Amendment No. 11987190C, which remains at a maximum of 739,269 square feet (including the cellar space of 91,772 square feet).

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

No additional conditions are recommended for additional public improvements with this Preliminary Plan Amendment application. The added conditions are procedural in nature.

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;

The Applicant is not proposing any additions or modifications to the approved density. A finding for adequate public facilities was made with the approval of Preliminary Plan Amendment No. 11987190A. Projects within the vicinity of the Site requiring transportation impact analysis have included the approved but unbuilt density associated with this Site as a pipeline project, which was incorporated into the background and total future scenarios of those transportation impact studies. The validity period for the Preliminary Plan Amendment is still valid and therefore a transportation impact study is not required as part of the Subject Application.

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and

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The Applicant has provided sufficient evidence for the Board to determine the amount of previously approved development. The lot was approved for a maximum of 739,269 square feet of development including 91,772 square feet of cellar space, for a total gross floor area of 647,467 square feet.

(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

Not applicable because the Preliminary Plan Amendment No. 11987190C allows up to 739,269 square feet (647,497 square feet gross floor area) of maximum density for commercial development including retail and office. No residential density was approved or proposed as part of this Amendment Application; therefore school adequacy does not apply.

b. The Board may approve an amendment to the new development schedule approved under Section 4.3.J.7.a.ii if the applicant shows that financing has been secured for either:

i. completion of at least one new building in the next stage of the amended development schedule; or

ii. completion of infrastructure required to serve the next stage of the amended development schedule.

All infrastructure required by Preliminary Plan Amendment No. 11987190A has been constructed and all financing satisfied. These include improvements required by the Montgomery County Department of Transportation (Condition No. 5 of Preliminary Plan Amendment No. 11987190A) related to street standard upgrades to Fenton Street and Ellsworth Drive, sidewalks along Colesville Road, Fenton Street, and Ellsworth Drive, as well as streetscaping amenities along all frontages. These improvements are adequate to serve all future phases as well.

c. Exclusively residential subdivisions. The Board may extend a determination of adequate public facilities for an exclusively residential subdivision beyond the otherwise applicable validity period if the Department of Permitting Services has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Board may approve one or more extensions if the aggregate length of all extensions for the development does not exceed:

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i. 2.5 years for a subdivision with an original validity period of 7 years or less; or

ii. 6 years for a subdivision with an original validity period longer than 7 years.

Not applicable, this approval is not for an exclusively residential subdivision.

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

(a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;

Currently, per the State of Maryland Department of Assessments and Taxation (SDAT), the existing square footage of the building totals 344,498 square feet of the approved 647,497 square feet of gross floor area. This totals 53.2% of the total approved gross floor area, in excess of the required 40%.

(b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and

Per Finding 4.3.J.7.b.ii above, all infrastructure required by Preliminary Plan Amendment No. 11987190A has been constructed.

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

(1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or

(2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.

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As documented in the Table below, occupancy permits and/or final building permit inspections within the last four (4) years comprise at least 5% of the total gross floor area approved for the project, as required by paragraph (c)(2) above. This is allowed when at least 60% of the total gross floor area of the development has been built or is under construction. The Applicant requests a Subdivision Regulation Waiver to allow this section to be applied to the Project while only 53% of the total gross floor area of the development has been built or is under construction.

Table – Building permit inspections and/or use and occupancy permits issued within the last four years

DPS permit number	Date Issued	Date Finaled	Square Footage	Suite#/Tenant
838042	7/11/2018	9/11/2018	9,715 sf	C-107 (Five Below)
867065	3/13/2019	6/21/2019	3,415 sf	8661
895539	2/25/2020	7/28/2020	3,167 sf	B-103 (Don Pollo)
969785	1/13/2022	8/04/2022	17,506 sf	DSW
969504	5/18/2022	Under construction	13,224 sf	C-101 (Commas)
Total sf of Permits Issued/Finaled			33,803 sf (5.2%)	
Minimum requirement (5% of GFA)			Required 32,375 sf (5%)	
Gross Floor area approved			647,497 sf	
Gross Floor area built			344,498 sf	
% of Gross Floor area built			Required – 60% / Existing – 53.2%³	

The table demonstrates that five building permits have been issued and four building permits have been finaled within the last four (4) years totaling 33,803 square feet or 5.2% of the total approved gross floor area. Further, as discussed below, a Waiver is being requested to reduce the 60% requirement of construction to 53%.

ii. For any development that consists of more than one preliminary plan, the requirements of 7.d.i apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and were approved at the same time.

³ The Applicant is seeking a Subdivision Waiver per Section 50.9.3 of the Subdivision Ordinance and discussed below.

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Not applicable because the Subject Property is only subject to one preliminary plan, Preliminary Plan No. 119871900, as amended, and is not combined with any other project or site.

iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:

(a) 2.5 years for a subdivision with an original validity period of 7 years or less; or

(b) 6 years for a subdivision with an original validity period longer than 7 years.

This Amendment requests a 30-month (2.5-year) extension of the APF validity period as limited by this Section of the Subdivision Ordinance. If approved, the validity period would be extended from November 16, 2022, to May 16, 2025.

Section 50.9.3 – Subdivision Waiver of Section 50.4.3.J.7.d.i(c)(2)

Section 50.4.3.J.7.d.i(c)(2) requires that, for the APF validity period to be extended, the Department of Permitting Services must have completed the final building permit inspections for at least 5 percent of the gross floor area approved for the project within the last four years for projects with at least 60 percent of the gross floor area built or under construction. As noted above, the Applicant requests a waiver from this requirement to have the project at least 60 percent complete or under construction. The Board finds that the waiver can be granted based on the following findings.

1. Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare.

The existing building, minus the Phase III office tower, is fully built out, and through the COVID-19 pandemic, the Applicant has worked to maintain tenants and renovate as necessary to accommodate a rapidly changing retail environment. The office market, however, is under even more strain and uncertainty given changing remote work and office design evolution. The continuing pandemic and office market uncertainty is exacerbated by rising interest rates and supply chain issues. Under these practical difficulties and unusual circumstances, additional time is necessary to get a sense of future prospects to start construction. This additional time – 30 months (2.5 years) of the APF validity – will not adversely impact public health, safety, and welfare as the

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existing building and operations have existed for many years and will continue to serve the community.

2. The intent of the requirement is still met.

The intent of the 60% provision is to ensure that buildings are being constructed in a timely manner and to a substantial extent. Ellsworth Place continues to invest in upgrades and modifications to retain and attract tenants in a very uncertain retail climate. While many of these upgrades such as exterior signage and façade improvements are not reflected in the built gross floor area, they are an important part of, and contribute to, Silver Spring's vital downtown. The 53% of approved and built square footage is attributed to the retail component, however, due to market demand, the remaining gross floor area attributed to the office remains infeasible. For these reasons, Staff recommends approval of the waiver as it allows for continued investment as the office tower option is explored.

3. The waiver is:

a. The minimum necessary to provide relief from the requirements.

The request – allowing 53.2% of the approved gross floor area as the threshold rather than 60% - is the minimum necessary to provide relief from the requirements.

b. Consistent with the purposes and objectives of the General Plan.

The waiver is consistent with the General Plan that encourages mixed-use development in downtown, metro-accessible areas. Ellsworth Place is an excellent example of commercial development in difficult times for retail and non-residential buildings. This waiver supports continued investment in a vibrant downtown Silver Spring.

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BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 30 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 is 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 the motion of Commissioner Hill, seconded by Commissioner Branson, with a vote of 4-0; Chair Zyontz, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, Commissioner Presley absent, at its regular meeting held on Thursday, November 17, 2022, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board