



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

MCPB No. 19-038
Preliminary Plan No. 120190090
850 Sligo Avenue
Date of Hearing: March 28, 2019

MAY 15 2019

RESOLUTION

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

WHEREAS, on November 8, 2018, Moonlight, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on approximately 19,401 square feet or 0.45 acres on a tract measuring 0.63 acres of CR 3.0 C 2.0 R 2.75 H 60T zoned-land, located on southeast quadrant of the intersection of Fenton Street and Sligo Avenue ("Subject Property"), in the Silver Spring CBD Policy Area and 2000 *Silver Spring Central Business District Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120190090, 850 Sligo Avenue ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 15, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 28, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on March 28, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by commissioner Patterson, with a vote of 4-0; Commissioners Anderson, Cichy, Dreyfuss, and Patterson voting in favor, and Commissioner Fani-Gonzalez absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120190090 to create 1 lot on the Subject Property, subject to the

following conditions:¹

1. This Preliminary Plan is limited to 1 lot for up to 85 age-restricted multi-family residential dwelling units and up to 6,912 square feet of non-residential uses.
2. Prior to record plat, the Applicant must record a covenant in the Land Records of Montgomery County restricting the multi-family units to residents aged 55 and over. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel, and its book and page must be shown on the record plat.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter, dated March 15, 2019, except conditions 5, 6, and 7.a.2, as they pertain to the undergrounding of utilities on Sligo Avenue, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Applicant must dedicate right-of-way, as shown on the Certified Preliminary Plan, necessary to accommodate the Sector Plan recommended 40-foot wide right-of-way between the Subject Property line and Sligo Avenue right-of-way, except where 40 feet of right-of-way cannot be achieved due to the location of the existing office tower.
6. The record plat must show necessary easements.
7. Prior to recordation of any plat, Site Plan No. 820190050 must be certified by Staff.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated February 11, 2019, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Certified Preliminary Plan must contain the following note:

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

¹ For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

10. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Resolution.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The layout of the subdivision, including size, width, shape, orientation and diversity of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The lot size, width, shape and orientation are appropriate for the location of the subdivision considering the recommendations in the 2000 *Silver Spring Sector Plan* and the type of development and use contemplated. As described in the Staff Report, the lot was reviewed under and found to be in compliance with the dimensional requirements for the CR zone as specified in the Zoning Ordinance.

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan.*

The Subject Property is within the Fenton Village Overlay Zone (FVO) portion of the Silver Spring CBD. While there is flexibility in the type of development permitted in this area, the FVO is in place to ensure that new development is compatible with nearby uses. More specifically, the FVO encourages a mix of housing and commercial uses but limits building heights to ensure compatibility with adjacent residential neighborhoods. Open space can be transferred off-site in the same district.

Although the Sector Plan calls to retain the CBD-1 Zone, the Subject Property was rezoned through the Zoning Ordinance rewrite to CR 3.0 C 2.0 R 2.75 H 60T, effective October 31, 2014. The intent of the CBD-1 zoning was to encourage redevelopment within the CBD by allowing more commercial density in response to the current market (in 2000), but also provide the flexibility for both commercial or residential high-rises, or mixed-use projects. The Application will be a mixed-use, mid-rise residential development with ground-floor non-

residential uses under the optional method of development, which satisfies the intent of the CBD-1 Zone and the current CR Zone.

Urban Design Recommendations

The Sector Plan provides general urban design recommendations for redevelopment projects in the Fenton Village Overlay Zone as well as the following specific recommendations:

- *Examine the potential for housing in Fenton Village Overlay zone, particularly in the transition area between the commercial and residential areas.*

This project satisfies the recommendation of adding housing within the FVO and provides a transition between the higher heights and densities of the Silver Spring CBD and adjacent residential neighborhood.

- *Upgrade the physical appearance of Fenton Street through streetscaping, landscaped parking lots, infill development that helps define the street.*

The Application will revitalize an existing vacant office building and surface parking lot into a vibrant mixed-use, predominantly residential, project. The new building will be located directly along the street edge at Fenton Street, Gist Avenue, and Sligo Avenue and will improve the sidewalk and streetscape improvements, including undergrounding utilities along the site's Gist Avenue frontage, including the utility pole on the corner of Gist Avenue and Fenton Street, in accordance with the Sector Plan recommendations.

- *Limit building height on the east side of Fenton Street to 60 feet for buildings with residential uses. Projects proposed along the east side of Fenton Street should make a transition between the commercial district and the adjacent single-family homes, creating compatibility through height changes, siting, and green, landscaped buffers.*

The new building will step down the maximum height, from Fenton Street toward the existing single-family homes, and will add a landscaped buffer along the eastern side of the Subject Property to further improve the transition to the single-family neighborhood. The existing building to be reused is grandfathered at its current height.

General Recommendations

The Sector Plan envisions Silver Spring as a place that invites revitalization. The Sector Plan outlines six themes under which that vision can be achieved: transit-oriented downtown, commercial

downtown, residential downtown, green downtown, civic downtown and pedestrian-friendly downtown. Each of these themes is intended to guide new development within the Silver Spring CBD and is discussed specifically below:

Transit-Oriented Downtown

The Subject Property is located on the east side of Fenton Street between Sligo Avenue and Gist Avenue and is a gateway into the CBD from points south and east. The Sector Plan's transit-oriented downtown theme strives to balance the needs of both commuter and local traffic and of walkers and drivers to maximize the investment in Silver Spring's transit infrastructure through both transportation improvements and land use efforts. The Plan further states that transportation options should link transit and non-motorized forms of transportation. The Subject Property is ½ mile from the Silver Spring Transit Center and the future Purple Line station at the Silver Spring Library and is currently served by Metrobus, RideOn, the VanGo Circulator, and Capital Bikeshare.

Commercial Downtown

Commercial activity, a mutually supportive mix of office, stores, and other business enterprises, is the defining feature of a successful downtown. The Preliminary plan may include a ground floor commercial component, of up to 6,912 square feet, if market conditions are favorable.

Residential Downtown

The Sector Plan's residential downtown theme seeks to create a mix of housing choices supported by parks, shopping, cultural, civic and employment uses with transit. "A green and pedestrian-friendly downtown will create parks, plazas, and streets of a desirable residential community." The Application will provide up to 85 age-restricted multi-family dwelling units with 12.5% MPDUs.

Green Downtown

The green downtown theme of the Sector Plan envisions shaded, tree-lined streets and well-placed green parks and plazas, creating a comprehensive system of open spaces that provide economic, environmental and aesthetic benefits throughout downtown. The Sector Plan states "Landscaped plazas are incorporated into building and site design to create visual and physical respite, to create formal and informal gathering places, and to complement street and building design." Pursuant to the Application and associated site plan, the streetscape along Fenton Street, Sligo Avenue, and Gist Avenue will be

upgraded with street trees, paving, and lighting to improve the pedestrian experience and overall appearance of the public realm.

Civic Downtown

The civic downtown theme envisions formal or informal, large or small, public or private civic spaces, where people meet, cross paths and gather. The Preliminary Plan will accommodate a public open space immediately adjacent to the project in the Gist Avenue right-of-way, in the form of a small yet effective gathering space, providing a unique civic space that will add to the variety of open spaces in Silver Spring.

Pedestrian-Friendly Downtown

The pedestrian-friendly downtown theme of the Sector Plan encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. The Sector Plan states “An urban area’s greatest economic asset, and strongest physical definition comes from its pedestrian environment.”

The Preliminary Plan will provide age-restricted housing within walking distance to retail, restaurant, and office uses. This proximity to existing and civic and commercial uses will promote pedestrian activity and street activation. The proposed building placement also enhances the pedestrian environment by locating the buildings directly along the street edge to create a continuous building line and define the pedestrian environment.

As conditioned, the Application is consistent with the six themes identified in the 2000 *Silver Spring CBD Sector Plan*.

Circulation Systems Recommendations

The Sector Plan recommends creating a system of trails and bike routes, implementing streetscape improvements to create a safe and pleasant pedestrian environment, and where appropriate, reuse public parking facilities, and to make circulation improvements to local roads. This vision was recently updated through the 2018 Bicycle Master Plan, which recommends a separated bike network within the Silver Spring CBD. The project respects the master plan recommended bicycle lanes on Fenton Street by providing adequate right-of-way for their future implementation. As of the date of this staff report, MCDOT anticipates the Fenton Street bicycle lanes to be implemented on the west (opposite) side of the street and directed the applicant not to construct the bike lanes at this time.

The Application will provide streetscape improvements along Fenton Street Sligo Avenue, and Gist Avenue, which will create an inviting pedestrian

environment that will activate the street and support the ground-floor retail included as part of the Project. As conditioned, the Application conforms to the Sector Plan recommendations for Circulation Systems.

Housing Recommendations

The housing objective of the Sector Plan is to develop new residential projects to provide housing and encourage maintenance of existing housing, creating Silver Spring as an even more desirable residential market. The recommendations include:

- provide housing choice and market-feasible development options, including apartments and townhouses;
- rezone CBD properties to encourage residential development; and
- convert selected public-sector surface parking lots to housing.

Although the Subject Property is not identified in the Sector Plan as a potential housing site, the Application promotes the housing choice goal by providing age-restricted housing. The additional housing provided by the Application will facilitate the availability of new housing in a range of types and rents within walking distance of transit.

In conformance with the objectives of the Sector Plan, the additional residential development will activate the urban environment and contribute to the creation of a "thriving downtown residential community." Additionally, as discussed above, the building has been designed to promote compatibility with the surrounding single-family residential homes and will create an approachable residential urban scale.

The Preliminary Plan substantially conforms to the 2000 *Silver Spring Sector Plan*. The Preliminary Plan complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The Site is not subject to an Urban Renewal Plan.

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

Pedestrian and bicycle access to the Subject Property is proposed directly from sidewalks along Fenton Street, Sligo Avenue, and Gist Avenue. Bicycle access will be enhanced on Fenton Street upon completion of the MCDOT separated bicycle lanes project, discussed below. The Subject Project does not preclude installation of the Fenton Street bicycle lanes, which are anticipated to be constructed by MCDOT on the opposite (southbound) side of Fenton Street.

Vehicular access to the Subject Property is proposed via Gist Avenue and Sligo Avenue, which will operate in the following configuration: loading and service access will occur via the Sligo Avenue access point and residential garage access will be provided via a driveway on Gist Avenue. As conditioned, the Gist Avenue access point will be constructed to direct outbound site traffic toward Fenton Street.

Master Plan Roadways and Pedestrian / Bikeway Facilities

The 2000 *Silver Spring CBD Sector Plan*, the 2013 *Countywide Transit Corridors Functional Master Plan*, the 2018 *Bicycle Master Plan* and 2018 *Master Plan of Highways and Transitways* recommend the following master plan facilities along property frontage:

1. Sligo Avenue, along the northern frontage, as a business district roadway with a minimum right-of-way width of 80' (40' from the center line).
2. Fenton Street, along the western frontage, as an arterial with a minimum right-of-way width of 80' (40' from centerline); a separated bikeway.
3. Gist Avenue, along the southern frontage, as a shared roadway.

Sector-Planned Transportation Demand Management

As a project within the Silver Spring Transportation Management District (TMD), the development is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Silver Spring TMD. The specific criterion requiring a TMAg is 25 or more employees or more than 100 dwelling units.

Adequate Public Facilities

A transportation exemption statement, dated December 21, 2018, satisfied the Local Area Transportation Review for the Subject Application because the Project generates fewer than 50 net new peak hour person trips. When compared to the existing office use, the proposed development is estimated to generate a net reduction of 51 morning peak-hour person trips (25 fewer vehicle trips) and 18 fewer evening peak-hour person trips.

School Adequacy

The Subject Preliminary Plan proposes up to 85 age-restricted multifamily units. Based on the 2016-2020 Subdivision Staging Policy, the moratorium currently affecting the Montgomery Blair High School Cluster does not apply to the approval of age-restricted units. Therefore, the annual schools test does not apply. Should the Applicant wish to remove the "age-restricted" designation for any or all of the units covered by this subdivision, they must submit an application to amend this approval, which will trigger a new schools adequacy review.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property.

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

Environment

Forest Conservation

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(s)(2) because the proposed activity occurs on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet. This exemption was confirmed through 42018103E on December 29, 2017.

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

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services (MCDPS) on February 11, 2019 (Attachment C). The Project proposes to meet stormwater management requirements through the use of a green roof and micro-bioretenion. MCDPS granted the project a partial waiver for quality requirements and a full waiver for quantity requirements based on site constraints.

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

The Applicant requested to have the exterior noise guidelines waived, under Section 2.2.2 of the 1983 Noise Guidelines, due to the nature of the urban downtown. The Project proposes outdoor open space offsite within the right-of-way adjacent to Gist Avenue and Fenton Street and measures to mitigate noise within the streetscape would be detrimental to good urban design principles. As a result, some noise will be inevitable. Construction methods and materials on the proposed building will be subject to conditions designed to attenuate noise in interior spaces. The Planning Board approves the waiver.

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 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 15 2019 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Cichy, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, April 25, 2019, 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. 19-119
Preliminary Plan No. 12019009A
850 Sligo Avenue
Date of Hearing: October 10, 2019

OCT 16 2019

RESOLUTION

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

WHEREAS, on May 15, 2019, the Planning Board, by Resolution MCPB No. 19-038, approved Preliminary Plan No. 120190090, creating one 0.45 acre lot on a tract measuring 0.63 acres of land in the CR 3.0 C 2.0 R 2.75 H 60T zone, located in the southeast quadrant of the intersection of Fenton Street and Sligo Avenue ("Subject Property"), in the Silver Spring CBD Policy Area and within the Silver Spring Central Business District ("*Sector Plan*") area; and

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

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12019009A, 850 Sligo Avenue ("Preliminary Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 26, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 10, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

Approved as to
Legal Sufficiency:

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12019009A to remove the age-restricted use from the multifamily component of the project by modifying condition number 1, as follows, and deleting condition number 2:¹

1. This Preliminary Plan is limited to 1 lot for up to 85 multifamily residential dwelling units and up to 6,912 square feet of non-residential uses.
2. Condition 2 is deleted in its entirety.
3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter, dated March 15, 2019, except conditions 5, 6, and 7.a.2, as they pertain to the undergrounding of utilities on Sligo Avenue, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
5. The Applicant must dedicate right-of-way, as shown on the Certified Preliminary Plan, necessary to accommodate the Sector Plan recommended 40-foot wide right-of-way between the Subject Property line and Sligo Avenue right-of-way, except where 40 feet of right-of-way cannot be achieved due to the location of the existing office tower.
6. The record plat must show necessary easements.
7. Prior to recordation of any plat, Site Plan No. 82019005A must be certified by Staff.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated February 11, 2019, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Certified Preliminary Plan must contain the following note:

¹ For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

10. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of Resolution MCPB No. 19-038.

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

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan.*

The Subject Property is within the Fenton Village Overlay Zone (FVO) portion of the Silver Spring CBD. While there is flexibility in the type of development permitted in this area, the FVO is in place to ensure that new development is compatible with nearby uses. More specifically, the FVO encourages a mix of housing and commercial uses but limits building heights to ensure compatibility with adjacent residential neighborhoods. Open space can be transferred off-site in the same district.

Although the Sector Plan calls to retain the CBD-1 Zone, the Subject Property was rezoned through the Zoning Ordinance rewrite to CR 3.0 C 2.0 R 2.75 H 60T, effective October 31, 2014. The intent of the CBD-1 zoning was to encourage redevelopment within the CBD by allowing more commercial density in response to the current market (in 2000), but also provide the flexibility for both commercial or residential high-rises, or mixed-use projects. The Application will be a mixed-use, mid-rise residential development with ground-floor non-residential uses under the optional method of development, which satisfies the intent of the CBD-1 Zone and the current CR Zone.

Urban Design Recommendations

The Sector Plan provides general urban design recommendations for redevelopment projects in the Fenton Village Overlay Zone as well as the following specific recommendations:

- *Examine the potential for housing in Fenton Village Overlay zone, particularly in the transition area between the commercial and residential areas.*

This project satisfies the recommendation of adding housing within the FVO and provides a transition between the higher heights and densities of the Silver Spring CBD and adjacent residential neighborhood.

- *Upgrade the physical appearance of Fenton Street through streetscaping, landscaped parking lots, infill development that helps define the street.*

The Application will revitalize an existing vacant office building and surface parking lot into a vibrant mixed-use, predominantly residential, project. The new building will be located directly along the street edge at Fenton Street, Gist Avenue, and Sligo Avenue and will improve the sidewalk and streetscape improvements, including undergrounding utilities along the site's Gist Avenue frontage, including the utility pole on the corner of Gist Avenue and Fenton Street, in accordance with the Sector Plan recommendations.

- *Limit building height on the east side of Fenton Street to 60 feet for buildings with residential uses. Projects proposed along the east side of Fenton Street should make a transition between the commercial district and the adjacent single-family homes, creating compatibility through height changes, siting, and green, landscaped buffers.*

The new building will step down the maximum height, from Fenton Street toward the existing single-family homes, and will add a landscaped buffer along the eastern side of the Subject Property to further improve the transition to the single-family neighborhood. The existing building to be reused is grandfathered at its current height.

General Recommendations

The Sector Plan envisions Silver Spring as a place that invites revitalization. The Sector Plan outlines six themes under which that vision can be achieved: transit-oriented downtown, commercial downtown, residential downtown, green downtown, civic downtown and pedestrian-friendly downtown. Each of these themes is intended to

guide new development within the Silver Spring CBD and is discussed specifically below:

Transit-Oriented Downtown

The Subject Property is located on the east side of Fenton Street between Sligo Avenue and Gist Avenue and is a gateway into the CBD from points south and east. The Sector Plan's transit-oriented downtown theme strives to balance the needs of both commuter and local traffic and of walkers and drivers to maximize the investment in Silver Spring's transit infrastructure through both transportation improvements and land use efforts. The Plan further states that transportation options should link transit and non-motorized forms of transportation. The Subject Property is ½ mile from the Silver Spring Transit Center and the future Purple Line station at the Silver Spring Library and is currently served by Metrobus, RideOn, the VanGo Circulator, and Capital Bikeshare.

Commercial Downtown

Commercial activity, a mutually supportive mix of office, stores, and other business enterprises, is the defining feature of a successful downtown. The Preliminary plan may include a ground floor commercial component, of up to 6,912 square feet, if market conditions are favorable.

Residential Downtown

The Sector Plan's residential downtown theme seeks to create a mix of housing choices supported by parks, shopping, cultural, civic and employment uses with transit. "A green and pedestrian-friendly downtown will create parks, plazas, and streets of a desirable residential community." The Application will provide up to 85 multifamily dwelling units with 12.5% MPDUs.

Green Downtown

The green downtown theme of the Sector Plan envisions shaded, tree-lined streets and well-placed green parks and plazas, creating a comprehensive system of open spaces that provide economic, environmental and aesthetic benefits throughout downtown. The Sector Plan states "Landscaped plazas are incorporated into building and site design to create visual and physical respite, to create formal and informal gathering places, and to complement street and building design." Pursuant to the Application and associated site plan, the streetscape along Fenton Street, Sligo Avenue, and Gist Avenue will be upgraded with street trees, paving, and lighting to improve the pedestrian experience and overall appearance of the public realm.

Civic Downtown

The civic downtown theme envisions formal or informal, large or small, public or private civic spaces, where people meet, cross paths and gather. The Preliminary Plan will accommodate a public open space immediately adjacent to the project in the Gist Avenue right-of-way, in the form of a small yet effective gathering space, providing a unique civic space that will add to the variety of open spaces in Silver Spring.

Pedestrian-Friendly Downtown

The pedestrian-friendly downtown theme of the Sector Plan encourages the development of active streets and sidewalks, busy with people walking to shop, commute, or for pleasure. The Sector Plan states “An urban area’s greatest economic asset, and strongest physical definition comes from its pedestrian environment.”

The Preliminary Plan will provide multifamily housing within walking distance to retail, restaurant, and office uses. This proximity to existing and civic and commercial uses will promote pedestrian activity and street activation. The proposed building placement also enhances the pedestrian environment by locating the buildings directly along the street edge to create a continuous building line and define the pedestrian environment.

As conditioned, the Application is consistent with the six themes identified in the 2000 *Silver Spring CBD Sector Plan*.

Circulation Systems Recommendations

The Sector Plan recommends creating a system of trails and bike routes, implementing streetscape improvements to create a safe and pleasant pedestrian environment, and where appropriate, reuse public parking facilities, and to make circulation improvements to local roads. This vision was recently updated through the 2018 Bicycle Master Plan, which recommends a separated bike network within the Silver Spring CBD. The project respects the master plan recommended bicycle lanes on Fenton Street by providing adequate right-of-way for their future implementation. As of the date of this staff report, MCDOT anticipates the Fenton Street bicycle lanes to be implemented on the west (opposite) side of the street and directed the applicant not to construct the bike lanes at this time.

The Application will provide streetscape improvements along Fenton Street Sligo Avenue, and Gist Avenue, which will create an inviting pedestrian environment that will activate the street and support the ground-floor

retail included as part of the Project. As conditioned, the Application conforms to the Sector Plan recommendations for Circulation Systems.

Housing Recommendations

The housing objective of the Sector Plan is to develop new residential projects to provide housing and encourage maintenance of existing housing, creating Silver Spring as an even more desirable residential market. The recommendations include:

- provide housing choice and market-feasible development options, including apartments and townhouses;
- rezone CBD properties to encourage residential development; and
- convert selected public-sector surface parking lots to housing.

Although the Subject Property is not identified in the Sector Plan as a potential housing site, the Application promotes the housing choice goal by providing multifamily housing. The additional housing provided by the Application will facilitate the availability of new housing in a range of types and rents within walking distance of transit.

In conformance with the objectives of the Sector Plan, the additional residential development will activate the urban environment and contribute to the creation of a "thriving downtown residential community." Additionally, as discussed above, the building has been designed to promote compatibility with the surrounding single-family residential homes and will create an approachable residential urban scale.

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

Pedestrian and bicycle access to the Subject Property is proposed directly from sidewalks along Fenton Street, Sligo Avenue, and Gist Avenue. Bicycle access will be enhanced on Fenton Street upon completion of the MCDOT separated bicycle lanes project, discussed below. The Subject Project does not preclude installation of the Fenton Street bicycle lanes, which are anticipated to be constructed by MCDOT on the opposite (southbound) side of Fenton Street.

Vehicular access to the Subject Property is proposed via Gist Avenue and Sligo Avenue, which will operate in the following configuration: loading and service access will occur via the Sligo Avenue access point and residential garage access will be provided via a driveway on Gist Avenue. As conditioned, the Gist Avenue access point will be constructed to direct outbound site traffic toward Fenton Street.

Master Plan Roadways and Pedestrian / Bikeway Facilities

The 2000 *Silver Spring CBD Sector Plan*, the 2013 *Countywide Transit Corridors Functional Master Plan*, the 2018 *Bicycle Master Plan* and 2018 *Master Plan of Highways and Transitways* recommend the following master plan facilities along property frontage:

1. Sligo Avenue, along the northern frontage, as a business district roadway with a minimum right-of-way width of 80' (40' from the center line).
2. Fenton Street, along the western frontage, as an arterial with a minimum right-of-way width of 80' (40' from centerline); a separated bikeway.
3. Gist Avenue, along the southern frontage, as a shared roadway.

Sector-Planned Transportation Demand Management

As a project within the Silver Spring Transportation Management District (TMD), the development is required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Silver Spring TMD. The specific criterion requiring a TMAg is 25 or more employees or more than 100 dwelling units.

Adequate Public Facilities

A transportation exemption statement, dated July 1, 2019, satisfied the Local Area Transportation Review for the Subject Application because the Project generates fewer than 50 net new peak hour person trips. When compared to the existing office use, the proposed development is estimated to generate a net reduction of 33 morning peak-hour person trips and 6 additional evening peak-hour person trips.

School Adequacy

The Subject Preliminary Plan proposes up to 85 multifamily units. Based on the 2016-2020 Subdivision Staging Policy, the moratorium currently affecting the Montgomery Blair High School Cluster does not apply to multifamily units on blighted/ condemned sites when the Project generates 10 or fewer students.

Overview and Applicable School Test

As an Application presented to the Planning Board in October 2019, the Project is subject to the FY20 Annual School Test, approved by the Planning Board on June 20, 2019 and effective July 1, 2019.

Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The subject property is located in the east region of the County.

Per Unit Student Generation Rates – East Region

	Elementary School	Middle School	High School
SF Detached	0.203	0.103	0.144
SF Attached	0.219	0.115	0.160
MF Low- to Mid-Rise	0.253	0.112	0.148
MF High-Rise	0.088	0.036	0.047

With a net of 85 multifamily high-rise units, the proposed project is estimated to generate the following number of students:

Type of Unit	Net New Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
MF High-Rise	85	0.088	7.480	0.036	3.060	0.047	3.995
TOTAL	85		7		3		3

This project is estimated to generate 7 new elementary school students, 3 new middle school students, and 3 new high school students.

Cluster Adequacy Test

The project is located in the Blair High School Cluster. The student enrollment and capacity projections from the FY20 Annual School Test for the cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2024			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	4,920	4,927	99.9%	993	7
Middle	2,687	2,772	96.9%	639	3
High	3,619	2,912	124.3%	0	3

The Moratorium Threshold identified in the table is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. Current projections for the cluster exceed the moratorium threshold at the high school level, therefore the Blair cluster service area is under a residential development moratorium for FY20.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are East Silver Spring ES and Takoma Park MS, respectively. Based on the FY20 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, September 2024				Moratorium Threshold	Estimated Impact
	Enrollment	Program Capacity	% Utilization	Surplus /Deficit		
East Silver Spring ES	527	560	94.1%	+33	146	7
Takoma Park MS	1,289	1,306	98.7%	+17	279	3

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the last column, the estimated enrollment impacts of this application fall below the moratorium thresholds for both East Silver Spring ES and Takoma Park MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

School Capacity

The Montgomery Blair Cluster service area is currently under a residential development moratorium, however, there are several exceptions to moratoria. One of these exceptions allows the Planning Board to approve an application, such as this Amendment, that generates no more than 10 students at any one school if it meets one of the following criteria:

1. Replaces or remediates a condemned, or previously condemned and currently vacant structure located within, abutting or confronting a state-designated Opportunity Zone; or
2. Is a project having more than 50% affordable housing units for households earning 60% or less of area median income.

Based on the FY20 Annual Schools Test, effective July 1, 2019, the Application is estimated to generate 7 new elementary school students, 3 new middle school students, and 3 new high school students and therefore qualifies for an exception to the residential development moratorium.

Other Public Facilities

Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service, which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Subject Property.

The Preliminary Plan substantially conforms to the 2000 *Silver Spring Sector Plan*. The Preliminary Plan complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The Site is not subject to an Urban Renewal Plan.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is ~~OCT 16 2019~~ (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of

this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, October 10, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

DEVELOPMENT APPLICATIONS AND REGULATORY COORDINATION
ADOPTED RESOLUTION ROUTING SHEET

Plan No: 12019009A

Plan Name: 850 Sligo Ave

MCPB No: 19-119

DATE RECEIVED FROM CHAIRMAN'S OFFICE: 10/15/19

Reviewed/Routed By:

Date:

1. ROUTED TO AREA TEAM
LEAD REVIEWER:

A) DARC Admin
Name: Michelle

[Signature]

10/15

2. REVIEWED BY AREA TEAM
LEAD REVIEWER: M.F.

- A) Resolution Reviewed for layout and typos; and found to be okay
- B) Resolution Routed back to DARC Admin identified above

[Signature]

10/15

3. RESOLUTION MAILING:

- A) **Resolution mailing list includes:**
 - a) all registered hearing speakers (from Technical Writers), b) all individuals who sent correspondence in response to the staff report, and
 - c) the applicant/attorney/engineer.
- B) Resolution date stamped (2 places)
- C) Resolution mailed

4. RESOLUTION CLOSEOUT:

- A) Original and 1 copy of Resolution to Technical Writer
- B) Copy of Resolution to Legal
- C) Copy of Resolution to the Board Chair's Office
- D) Copy of the Resolution to File

5. HANSEN UPDATE:

- A) Resolution Mailing Date and Validity Periods added to Hansen
- B) Resolution and mailing list scanned into DAIC

Stacy P. Silber
Attorney
301-841-3833
spsilber@lercheearly.com

April 23, 2024

Chairman Artie Harris
Montgomery County Planning Board
2425 Reedie Drive
14th Floor
Wheaton, MD 20902

Re: 850 Sligo Avenue – Preliminary Plan No. 12019009A
Statement of Justification for Preliminary Plan Validity Extension Request

Dear Chair Harris:

On behalf of the Applicant Moonlight Inc., we hereby submit this request for an extension of the validity period of Preliminary Plan No. 12019009A (the “Application”) pursuant to Section 50-4.2H of the Montgomery County Subdivision Ordinance (the “Subdivision Ordinance”). This Application pertains to 850 Sligo Avenue, a mixed use multi-family residential development approved on property located at 850 Sligo Avenue in Silver Spring, Maryland (the “Property”). We are pleased to share that a national, affordable housing developer currently has the Property under contract, and they need additional time to complete their due diligence and potentially implement the underlying approvals on the Property, including recordation of the subject Plat.

On October 16, 2019, the Montgomery County Planning Board issued a Resolution approving Preliminary Plan No. 12019009A allowing development of up to 85 multifamily residential units and up to 6,912 square feet of commercial development. As part of the approval, the Board approved one lot on 0.63 acres of land. (the “Project”). At the time of the approval, the Property was zoned CR 3.0 C 2.0 R 2.75 H 60T.

The subject Preliminary Plan is valid for 36 months from the initiation date of June 14, 2019. The original Preliminary Plan validity date would have expired on June 15, 2022, but the Montgomery County Council granted a two-year automatic extension to preliminary plan validity periods for all preliminary plans that were valid on July 28, 2020. This extends the subject Preliminary Plan validity period until June 15, 2024. We ask that this period be extended by 24 months, or to June 15, 2026. This matches the Adequate Public Facility (“APF”) expiration date, which is also June 15, 2026. As mentioned, a national, affordable housing developer currently has a contract on the Property and they are in due diligence. The proposed extension is needed to provide the Applicant and/or its contract purchaser additional time to record a final plat for the Property.

In accordance with Section 50-4.2.H.3.a.ii of the Subdivision Ordinance, the Board may grant a request to extend the validity period of a preliminary plan if the Board finds “. . . the occurrence of significant, unusual and unanticipated events, beyond the applicant’s control and not caused by the applicant, have substantially impaired the applicant’s ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.”

In this instance, an extension is necessitated based on unforeseen and significant events and circumstances beyond the Applicant’s control. These circumstances are severely hampering the Applicant’s ability to validate the Plan by the originally approved expiration date. The extension is crucial to prevent undue hardship, considering the substantial efforts undertaken by the Applicant to facilitate implementation of the terms and conditions of the Plan approval thus far. Specifically, an extension is critical for the following reasons:

1. COVID-19 Pandemic and Market Conditions

The approval process for the property overlapped with the COVID-19 pandemic. In addition, the last couple of years have seen significant market volatility, including increased construction costs, and inflation and rising interest rates. These events are beyond the control of the Applicant and have resulted in the construction of the Project to be significantly more expensive than expected.

2. Failed Contracts with Several Interested Parties.

In response to the many market challenges, Moonlight has actively sought potential purchasers of the Property to implement the Board’s approvals. Since Planning Board approval of the Preliminary Plan, Moonlight had entered into Letters of Intent with several potential purchasers. All backed out of their respective agreements citing numerous reasons including market conditions and insurmountable costs,

As noted, a nationally known affordable housing developer has signed a contract on the Property, and is currently engaged in due diligence. The preliminary plan validity period extension is needed to allow sufficient time for this potential purchaser to evaluate the site and continue with implementation, including recordation of the plat.

3. Steps Taken to Finalize and Record the Plat.

The Applicant has spent considerable time and resources preparing the subject Plat to incorporate the requisite Preliminary Plan requirements. The only outstanding item for completion is a requirement to pay a fee and bond for public right-of-way improvements along Sligo Avenue, Fenton Street and Gist Avenue. MCDPS requires payment of such fee/bonds as a pre-requisite to their approval of the record plat. Given the project has been on hold for the reasons discuss herein, the

Applicant has not yet paid these fees or posted a bond. Once the fee is paid and bond posted, we anticipate that the Plat will be ready for final submittal and approval.

4. Council rezoned Property as part of the Silver Spring Downtown and Adjacent Communities Plan.

In May of 2022, the County Council adopted the Silver Spring Downtown and Adjacent Communities Plan. The Council eventually rezoned the Property to CR-3, C-3.0, R-3.0, H-70. Due to market conditions, and potential opportunities presented by the new Master Plan, the process caused potential contract purchasers to want to wait to see the results of the Council's decision before moving forward. Intervening market conditions, resulted in potential purchasers backing out of contracts. Currently, a national affordable housing developer has the Property under contract. They are evaluating the new zoning and possible opportunities and need additional time to complete their due diligence. The proposed preliminary plan extension is needed as they continue with their evaluation of the Property and the underlying entitlements.

5. The 24 month extension Aligns the Preliminary Plan Validity Period with the Project's Adequate Public Facilities ("APF") Validity Period.

The Project's APF Validity Period expires on June 15, 2026. The proposed preliminary plan extension to June 15, 2026 aligns with this APF expiration. With this validity period extension, both the Record Plat must be recorded and the building permit will need to be issued by June 15, 2026.

For the reasons discussed herein, Moonlight respectfully requests an extension of the validity period for Preliminary Plan 12019009A. Moonlight has invested substantial funds, time, and resources in obtaining entitlement approvals. Moonlight has diligently worked towards implementing the entitlements, and given market challenges has sought potential contract purchasers to buy the Property and redevelop the site. However, given these challenging market conditions, the Covid 19 pandemic and the intervening Silver Spring Master Plan process, the Applicant has not been able to validate the Preliminary Plan during the current preliminary plan validity period. In this instance, failure to extend the validity period would render these efforts futile and negate the progress made thus far. In addition, it could inadvertently thwart the current national affordable housing contract purchaser's ability to potentially implement the Board's current Preliminary Plan and other Project development approvals.

The Applicant submits this request in writing prior to when the established validity period expires on June 15, 2024, as required by Section 50-4.2.H.1.b of the Subdivision Ordinance. Furthermore, per Section 50-4.2.H.1.c, the Applicant certifies that the requested extension is the minimum additional time required to finish processing the record plat for the Project.

Thank you for your consideration of the Applicant's Preliminary Plan Extension Request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stacy Silber", with a stylized flourish at the end.

Stacy Silber

cc: Elza Hisel-McCoy
Stephanie Dickel

Ordinance No.: 19-12
Subdivision Regulation Amendment No.: 20-01
Concerning: [[Rules of Interpretation –
Computing Time Periods]]
Adequate Public
Facilities/Preliminary Subdivision
Plans -Validity Periods
Draft No. & Date: 7 - 7/27/2020
Introduced: June 23, 2020
Public Hearing: July 28, 2020
Adopted: July 28, 2020
Effective: July 28, 2020

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Friedson, Navarro, and Hucker

AN AMENDMENT to:

- Extend the validity period or deadlines of approved subdivisions that are unexpired at a certain date.

By amending

Montgomery County Code
Chapter 50. “Subdivision of Land”
[[Division 50.2. “Interpretation and Defined Terms”]]
[[Section 2.1. “Rules of Interpretation”]]
Division 50.3. “General Requirements”
Division 50.4. “Preliminary Plan”

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by introduced Subdivision Regulation Amendment.

Deleted from existing law by introduced Subdivision Regulation Amendment.

Added to the Subdivision Regulation Amendment by amendment.

Deleted from existing law or the Subdivision Regulation Amendment by amendment.

Existing law unaffected by Subdivision Regulation Amendment.

OPINION

Subdivision Regulation Amendment (SRA) No. 20-01, Rules of Interpretation – Computing Time Periods, Lead Sponsor Councilmember Riemer and Co-Sponsors Councilmembers Friedson, Navarro, and Hucker, was introduced on June 23, 2020.

SRA 20-01 would extend the duration of all deadlines and validity periods established for previously-approved, unexpired subdivisions by 2 years. The additional time runs from the period “applicable to the approval.” The period or date applicable to the approved application would include any extensions granted by the Planning Board. The extensions apply to unexpired approved applications. Unexpired applications include those applications for which the applicant has made a request for an extension to the Planning Board in a timely manner.

In its report to the Council, the Montgomery County Planning Board recommended that the SRA be approved with an amendment to retain the core idea but to leave the current code sections concerning interpretation and defined terms unchanged and to amend uncodified sections of Subdivision Regulations to accomplish the sponsors’ objective.

The Council’s public hearing was on July 28, 2020. There was no opposition to ZTA 20-01 other than the Planning Board’s alternative text.

The District Council reviewed Subdivision Regulation Amendment No. 20-01 at a worksession held immediately after the public hearing on July 28, 2020. The Council agreed to approve SRA 20-01 with the Planning Board’s proposed amendments, with editorial corrections. Section 3 of the SRA is to be part of the uncodified text of Section 50.3. Section 4 of the SRA is to be part of the uncodified text of Section 50.4. Uncodified text is not underlined.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 20-01 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

1 **Sec. 1. Chapter 50 is amended as follows:**

2 * * *

3 **Division 50.2. INTERPRETATION AND DEFINED TERMS**

4 **Section 2.1. Rules of Interpretation**

5 The following rules of interpretation apply to this Chapter.

6 A. How to Compute Periods Measured in Months. If a period of time is measured
7 in months, the period begins and ends on the same day of a month; however,
8 if there are not enough days in the final month for this to be possible, the
9 period ends on the final day of the final month.

10 B. How to Compute Periods Measured in Days. If this Chapter [[establishes a
11 validity period or]] requires or allows a person to perform an act within a
12 specific time period measured in days, the person must compute the deadline
13 in the following manner:

14 1. If the period follows an event, count the day after the event as the first
15 day of the period.

16 2. Count the remaining number of calendar days in the period; however,
17 if the period is 7 days or fewer, omit Saturdays, Sundays, and legal
18 holidays.

19 3. Do not count the last day if it is a Saturday, Sunday, legal holiday, or
20 if the office where the person must file a document or perform an act
21 is not open during the regular hours of that office on that day.

22 [[4. For unexpired applications approved before {effective date}, the
23 validity period or the time period is 2 years after the period applicable
24 to the approval.]]

25 C. Requirements to Act by a Specific Date.

26 1. If the law requires or allows a person to perform an act by a specific
27 date, but the specific date is a Saturday, Sunday, or legal holiday, the

28 person may perform the act on the next day that is not a Saturday,
29 Sunday, or legal holiday.

30 2. Any action required to be taken within a specific time period is
31 measured from the date of a final agency action, or, if a party seeks
32 judicial review of the agency action, from the date the court makes a
33 final decision.

34 [[3. For unexpired applications approved before {effective date}, the
35 specific date is 2 years after the date applicable to the approval.]]

36 * * *

37 **Sec. 2. Repeal of prior uncodified provisions.**

38 The uncodified provisions of Ordinance Numbers 16-35, 17-04, 17-31 and 18-04
39 which appear in Sections 50.3 and 50.4 are repealed.

40 **Sec. 3. Automatic Extensions.**

41 (a) Notwithstanding any provision of portions of Section 4.3.J to the contrary,
42 the validity period of any determination of adequate public facilities that was
43 valid on March 31, 2009, or for which a timely application for an extension
44 of the validity period was pending on March 31, 2009 is automatically
45 extended for 8 years after the date when the validity period would otherwise
46 have expired. This 8-year extension includes any extension granted
47 automatically by any previous subdivision amendment and must be treated
48 for all purposes as part of the validity period that was extended.

49 (b) Notwithstanding any provision of portions of Section 4.3.J to the contrary,
50 the validity period of any determination of adequate public facilities that was
51 valid on March 31, 2011, or for which a timely application for an extension
52 of the validity period was pending on March 31, 2011, is automatically
53 extended for 6 years after the date when the validity period would otherwise
54 have expired. This 6-year extension includes any extension granted

- 55 automatically by any previous subdivision amendment and must be treated
56 for all purposes as part of the validity period that was extended.
- 57 (c) Notwithstanding any provision of portions of Section 4.3.J to the contrary,
58 the validity period of any determination of adequate public facilities that was
59 valid on March 31, 2013, or for which a timely application for an extension
60 of the validity period was pending on March 31, 2013, is automatically
61 extended for 4 years after the date when the validity period would otherwise
62 have expired. This 4-year extension includes any extension granted
63 automatically by any previous subdivision amendment and must be treated
64 for all purposes as part of the validity period that was extended.
- 65 (d) Notwithstanding any provision of portions of Section 4.3.J to the contrary,
66 the validity period of any determination of adequate public facilities that was
67 valid on March 31, 2015 or for which a timely application for an extension
68 of the validity period was pending on March 31, 2015, is automatically
69 extended for 2 years after the date when the validity period would otherwise
70 have expired. This 2-year extension must be treated for all purposes as part
71 of the validity period that was extended.
- 72 (e) Notwithstanding any provision of portions of Section 4.3.J to the contrary,
73 the validity period of any determination of adequate public facilities that was
74 valid on July 28, 2020, or for which a timely application for an extension of
75 the validity period was pending on July 28, 2020, is automatically extended
76 for 2 years after the date when the validity period would otherwise have
77 expired. This 2-year extension includes any extension granted automatically

78 by any previous subdivision amendment and must be treated for all purposes
79 as part of the validity period that was extended.

80 * * *

81 **Sec. 4. Automatic Extensions.**

82 (a) Notwithstanding any provision of Section 4.2.G to the contrary, the validity
83 period of any preliminary subdivision plan that was valid on March 31,
84 2009, or for which a timely application for an extension of the validity
85 period was pending on March 31, 2009, including any separate phase of a
86 multi-phase plan, is automatically extended for 8 years after the date when
87 the validity period would otherwise have expired. This 8-year extension
88 includes any extension granted automatically by any previous subdivision
89 amendment and must be treated for all purposes as part of the validity period
90 that was extended.

91 (b) Notwithstanding any provision of Section 4.2.G to the contrary, the validity
92 period of any preliminary subdivision plan that was valid on March 31,
93 2011, or for which a timely application for an extension of the validity
94 period was pending on March 31, 2011, including any separate phase of a
95 multi-phase plan, is automatically extended for 6 years after the date when
96 the validity period would otherwise have expired. This 6-year extension
97 includes any extension granted automatically by any previous subdivision
98 amendment and must be treated for all purposes as part of the validity period
99 that was extended.

100 (c) Notwithstanding any provision of Section 4.2.G to the contrary, the validity
101 period of any preliminary subdivision plan that was valid on March 31,
102 2013, or for which a timely application for an extension of the validity
103 period was pending on March 31, 2013, including any separate phase of a
104 multi-phase plan, is automatically extended for 4 years after the date when

105 the validity period would otherwise have expired. This 4-year extension
106 includes any extension granted automatically by any previous subdivision
107 amendment and must be treated for all purposes as part of the validity period
108 that was extended.

109 (d) Notwithstanding any provision of Section 4.2.G to the contrary, the validity
110 period of any preliminary subdivision plan that was valid on March 31,
111 2015, or for which a timely application for an extension of the validity
112 period was pending on March 31, 2015, including any separate phase of a
113 multi-phase plan, is automatically extended for 2 years after the date when
114 the validity period would otherwise have expired. This 2-year extension
115 must be treated for all purposes as part of the validity period that was
116 extended.

117 (e) Notwithstanding any provision of Section 4.2.G to the contrary, the validity
118 period of any preliminary subdivision plan that was valid on July 28, 2020,
119 or for which a timely application for an extension of the validity period was
120 pending on July 28, 2020, including any separate phase of a multi-phase
121 plan, is automatically extended for 2 years after the date when the validity
122 period would otherwise have expired. This 2-year extension must be treated
123 for all purposes as part of the validity period that was extended.

124 **Sec. 5. Effective Date.** This amendment takes effect when it becomes law.
125

126 *Approved:*

127

128



8/7/2020

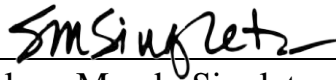
129 Marc Elrich, County Executive

Date

130

131 *This is a correct copy of Council action.*

132



8/9/2020

Selena Mendy Singleton, Esq.
Clerk of the Council

Date