



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

MCPB No. 20-047  
Site Plan No. 81999002M  
Downtown Silver Spring  
Date of Hearing: June 18, 2020

JUL 07 2020

**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, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on March 2, 1999, the Planning Board, approved Site Plan No. 819990020<sup>1</sup> for 1,175,935 gross square feet of retail, office, entertainment, restaurant, hotel and housing uses and 354,023 square feet of public amenities on 22.5 acres of CBD zoned-land, located at the corner of Colesville Road and Georgia Avenue ("Subject Property"), in the Silver Spring Central Business District Sector Plan ("Sector Plan") area; and

WHEREAS, on September 1, 1999, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 81999002A, for 1,240,198 gross square feet of mixed retail, entertainment, office, civic, a 242 room hotel, and 160 multi-family dwelling units, as well as 379,731 gross square feet of public use space, off-site amenities and facilities on the Subject Property; and

WHEREAS, on June 20, 2001, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 81999002B, to modify the design for the Silver Plaza public amenity space on the Subject Property; and

WHEREAS, on October 8, 2007, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 81999002F (MCPB No. 06-75), for 222 multi-family dwelling units, including 31 MPDUs, on Block E of the

<sup>1</sup> All other amendments not listed below were approved administratively.

Downtown Silver Spring development on the CBD-0.5 zoned land on the Subject Property; and

WHEREAS, on November 15, 2007, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 81999002G (MCPB No. 07-134), for a 41,986 square foot civic building and 136,930 gross square feet of on-site public use space, including an outdoor seating area, pavilion and ice skating rink on the Subject Property; and

WHEREAS, on January 21, 2016, the Planning Board approved an amendment to the previously approved site plan, designated Site Plan No. 81999002L (MCPB No. 16-006), to modify the existing exterior stairs including the public art component on the Subject Property; and

WHEREAS, on November 19, 2019, 8515 Georgia Avenue Associates LLC, PFA-A Silver Spring LC, PF A-B Silver Spring LC, PF A-C Silver Spring LC, PF A-D Silver Spring LC, PF A-H Silver Spring LC, PF A Silver Spring Manager LC (“Applicant”) filed an application for approval of an amendment to the previously approved site plans to redesign and increase public use space by 10,242 square feet, from 268,758 square feet to 279,000 square feet, restrict Ellsworth Drive access for non-essential vehicles, reduce parking by 11 spaces, decommission previously approved public art and install new public art, and update data table to reflect past amendments on the Subject Property; and

WHEREAS, Applicant’s application to amend the site plan was designated Site Plan No. 81999002M, Downtown Silver Spring (“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 June 5, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 18, 2020, 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 June 18, 2020 the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Verma, seconded by Commissioner Cichy, with a vote of 3-0; Commissioners Verma, Cichy, and Chair Anderson voting in favor, with Vice Chair Fani-Gonzalez and Commissioner Patterson abstaining.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 81999002M to redesign and increase public use space by 10,242 square feet, from 268,758 square feet to 279,000 square feet, restrict Ellsworth Drive access for non-essential vehicles, reduce parking by 11 spaces, decommission previously approved public art and install new public art, and update data table to reflect past amendments by adding the following conditions:<sup>2</sup>

1. Abandonment of Public Right-of-Way

- a. Prior to issuance of right-of-way permit, the Applicant must receive approval from County Council for the Abandonment Application No. AB-771 for the public right-of-way within Ellsworth Drive.
- b. The Certified Site Plan must include an alternative design for Ellsworth Drive without synthetic turf, to be implemented if the County Council does not approve Abandonment Application No. AB-771.

2. Department of Permitting Services-Right-of-Way

The Planning Board has reviewed and accepts the approval of the Montgomery County Department of Permitting Services Right-of-Way Permitting (DPS-RPP) Section in its memo dated May 20, 2020. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Site Plan approval.

3. Department of Permitting Services-Fire Department Access

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated May 26, 2020 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Site Plan approval.

4. Maintenance

In addition to the maintenance agreement integrated into the MCDPS FDA approval, the Applicant must provide the Manufacturer's Care and Maintenance Manual within the Certified Site Plan and regularly maintain the synthetic turf according to the latest version of this Manual.

5. Public Art

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<sup>2</sup> 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.

The Planning Board has reviewed and accepts the recommendations of the Art Review Panel as described in their letter dated May 4, 2020 and incorporates them as conditions of approval.

- a. The Applicant must install the public art concept designed by artist Foldhaus, as presented to the Planning Board's Art Review Panel on April 8, 2020 and illustrated in the Certified Site Plan.
- b. The Certified Site Plan must include the schematic design and the name of the artist, as well as the overall dimensions, prescribed materials, and general description of associated lighting fixtures, footers, and fasteners.
- c. Any significant changes to the concept must be presented to the Art Review Panel and approved by M-NCPCC Staff before Certified Site Plan.
- d. Significant changes to the concept may require a Site Plan Amendment.
- e. Prior to issuance of the first building permit for installation of the public art, the Applicant must notify the Art Review Panel per page 15 of the Art Review Panel's Policies and Procedures about the final location for the following art pieces: "Lightweb" by Craig Kraft; "A Celebration of Life: Homage to Food Plants of the World" by Jorge Somarriba (2004).
- f. Prior to issuance of the first building permit for installation of the public art, the Applicant and Artist(s) must execute a maintenance agreement for the public artwork and submit the executed document to the Montgomery County Planning Department.
- g. The building permit for the art installation must be issued prior to Use and Occupancy permit for the building alterations.
- h. Prior to final Use and Occupancy Permit for the artwork, the Applicant must provide and install the public art illustrated on the Certified Site Plan.
- i. Prior to final inspection of the public artwork, the Applicant must submit to the Public Art Coordinator of the Montgomery County Planning Department for inclusion in the County inventory of public artworks at least three images of the artwork on-site and the following information: the associated project number; title of the artwork; date of completion; description of materials used; and the address.

6. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPCC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement may be phased and must include a performance bond(s) or other form of surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.

- b. The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, synthetic turf, on-site lighting, site furniture, public amenities, public art, trash enclosures, associated improvements of development, including sidewalks, bikeways. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

7. Public Use Space and Amenities

- a. The Applicant must provide a minimum of 279,000 square feet of public use space on-site.
- b. Before the issuance of final use and occupancy certificates for the renovations, all public use space areas on the Subject Property must be completed.
- c. The Applicant must provide public amenities on-site as shown on the Certified Site Plan, these amenities may be updated and replaced from time to time with approval by MNCPPC staff.
- d. On the clock tower facade above the breezeway to the Wayne Avenue garage, Applicant may install either an electronic screen or scrim, as shown on the Certified Site Plan. The final design of the amenity must be compatible with the overall building facade and may be updated and replaced from time to time with approval by MNCPPC staff. The Visual Amenity is limited in use for artistic display and must not be utilized for advertisement or information purposes unless approved by the Sign Review Board, as required.
- e. The Applicant must install landscaping no later than the next growing season after completion of site work.

8. Lighting

- a. Prior to certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b. All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c. Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.

- d. Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.
- e. Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

9. Bikeway

The Applicant must clearly demonstrate the shared street bikeway along Ellsworth Drive as illustrated on the Certified Site plan and address the following:

- a. Demonstrate a minimum travel width of 12 feet.
- b. Revise dimensions for sidewalk bicycle markings to be a minimum of 18 inches by 18 inches.
- c. Provide a detail demonstrating safe transition at the following locations for review by staff and MCDOT:
  - 1. On Ellsworth Drive from the shared bikeway along the public plaza to the shared sidewalk bikeway
  - 2. Ellsworth Drive at Fenton Street
  - 3. Ellsworth Drive at the private alley.

10. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Add a note to Sheet L0802 stating that "Milling of the roadway is limited to the areas of turf installation. Any milling must maintain free flow of water from the roadway surface to the storm drain system to avoid standing water on Ellsworth Drive roadway."
- b. Ensure consistency of all details and layout between Site and Landscape plans.
- c. Modify data tables to reflect development standards approved by the Planning Board.
- d. Include all applicable approval letters, development program and related Sketch Plan, Preliminary Plan, Site Plan resolutions on the cover sheets.
- e. Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."

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

**BE IT FURTHER RESOLVED** that all site development elements shown on the latest electronic version of 81999002M, submitted via ePlans to the M-NCPPC as of the

date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan as revised by previous amendments, and all findings not specifically addressed remain in effect.*
2. *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.*

The Site Plan Amendment is in conformance with Project Plan 919980050, as amended.

3. *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.*

The Amendment is in keeping with the previous approvals for Downtown Silver Spring in regard to conformance with the CBD-0.5, CBD-1, CBD-2, and CBD R-2 zones. The Amendment will not alter any of the existing building heights, setbacks, or density. The Amendment proposes to increase public use space and reduce parking in Surface Lot Block C from 33 to 22 spaces, which has been reflected in the Project Data Table below.

*Project Data Table*

<b>Development Standard</b>	<b>Permitted/Required</b>	<b>Approved per 81999002L</b>	<b>Proposed for Approval</b>
<b>Lot Area (min. sf)</b>	20,000	980,100	980,100
<b>Net Lot Area (sf)</b>		932,659	932,659

<b>Gross Floor Area (sf)</b>			
Office		228,931	228,931
Retail-mixed use		507,340	507,340
Hotel		151,130	151,130
Civic Building		40,000	40,000
Residential		226,234	226,234
<b>Total (sf / FAR)</b>		<b>1,165,635 / 1.2</b>	<b>1,165,635 / 1.2</b>
<b>Amenities &amp; Facilities</b>			
Public Use Space	186,532	268,758	279,000
On-site seating		10,000	10,000
Off-site Improvements	80,586	92,278	92,278
<b>Total</b>	<b>267,118</b>	<b>376,036</b>	<b>386,278</b>
<b>Parking Spaces</b>			
Parking Garage Block B		1,812	1,812
Parking Garage Block D		1,341	1,341
Structure under Office Block B		257	257
Structure Under Residential Block E		146	146
Surface Lot Block C		33	22
Surface Lot Block A		281	281
<b>Total</b>	<b>3,775</b>	<b>3,870</b>	<b>3,859</b>
<b>Bike Parking</b>			
		15	22

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

The proposed Amendment will not alter any of the existing buildings or structures. The Amendment will increase the amount of public use space available to the public by expanding the limits of the space into existing Ellsworth Drive right-of-way, which is comprised of both public and private right-of-way. As conditioned, the Project must receive County Council approval for the abandonment of public right-of-way within Ellsworth Drive. Closure of Ellsworth Drive to thru traffic will not significantly impact the surrounding vehicular circulation system, as currently Ellsworth Drive is often informally closed to thru traffic. Ellsworth Drive will maintain accessibility to emergency services vehicles at all times and has received approval from the Department of Permitting Services Fire Department Access and Water Supply.



The Amendment will enhance pedestrian circulation by providing an extended area for outdoor active and passive enjoyment. The Applicant proposes to provide additional seating and activation elements such as ping pong tables, bistro café seating, a new water feature, and other elements to increase enjoyment of the space. The Applicant also proposes to increase landscaping by providing two new tree pits within the plaza and expanding tree pits along Ellsworth Drive to allow for additional shrubbery and vegetation. The Applicant proposes to extend the existing curb (rolled curb design) and sidewalk at the intersection of Fenton Street and Ellsworth Drive to provide an enhanced sidewalk area for pedestrians and indicate to vehicles that the street is not accessible. The rolled curb design will allow emergency access vehicles, as approved by MCDPS Fire Access and Water Supply Division.

There is existing street parking on the north and south side of Ellsworth Drive at the Georgia Avenue intersection, the Amendment proposes to remove the street parking on the northern side of Ellsworth Drive to expand the sidewalk area and provide street trees. This portion of Ellsworth Drive will remain open to vehicles, and a rolled curb will be installed after the private alley to restrict vehicles on Ellsworth Drive yet allow those vehicles to circulate through the private alley to the Wayne Avenue parking garage entrance or continue to Wayne Avenue. As conditioned, the Amendment maintains adequate, safe, and efficient pedestrian and vehicular systems.

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 original Site Plan approval (819990020) included a Forest Conservation Plan, which required 3.08 acres of afforestation and was originally met through providing 3.25 acres of planting landscape trees and receiving credit for saving existing trees. This Project does not change the existing limits of disturbance (LOD), however the Applicant proposes to amend the Forest Conservation Plan to remove four landscape trees and plant an additional nine landscape trees. This results in an additional 0.08 acres of landscape trees, bringing the total afforestation to 3.33 acres, exceeding the original 3.08 acre requirement.

The Amendment will redesign and reconfigure an existing hardscape public use space and right-of-way. As such, the Project was not subject to

stormwater compliance review as the Amendment consists of less than 5,000 square feet of land disturbance, per Article II, 10-31(c), which was confirmed by the Montgomery County Department of Permitting Services – Water Resources Section on October 30, 2019.

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 this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 07 2020 (which is the date that this resolution is mailed to all parties of record); and

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

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Verma, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Cichy and Verma voting in favor, Vice Chair Fani-González abstaining, and Commissioner Patterson absent at its regular meeting held on Thursday, July 2, 2020, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
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**81999002M & 91998005C – Downtown Silver  
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