



Offutt Estates: Preliminary Plan No. 120150040 and Site Plan No. 820150140

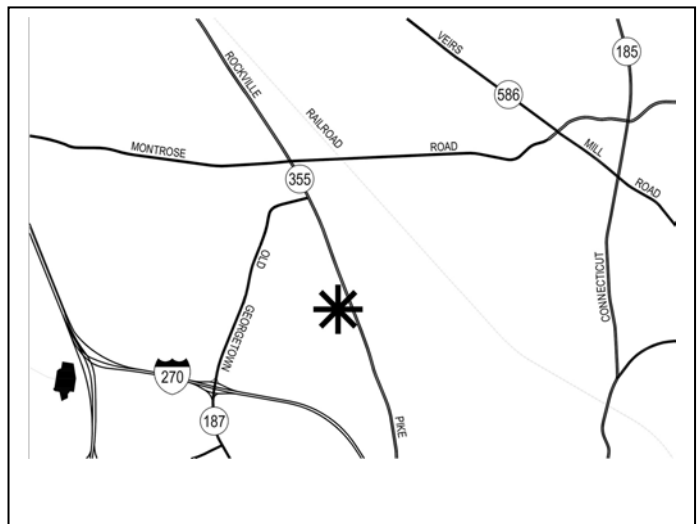
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Completed: 6/18/18

Description

Request to subdivide and create five lots for four one-family semidetached (duplex) units, one one-family detached unit, a private road, and HOA parcel(s).

Location: 5421 Hillery Way, Rockville, MD;
 Master Plan: 2010 *White Flint Sector Plan*;
 Zone: RT-12.5;
 Size: 0.5 acres;
 Acceptance Date: Preliminary Plan – October 20, 2014, Site Plan – May 3, 2016;
 Applicant: Miry and Alexander Livnat;
 Review Basis: Chapter 50, Chapter 59.



Summary

- Staff recommends approval with conditions.
- The Preliminary Plan approval includes approval of the Preliminary Forest Conservation Plan.
- The Site Plan approval includes approval of the Final Forest Conservation Plan.
- Staff supports the request to reduce the minimum setback from a detached dwelling lot, or land classified in a one-family, detached, residential zone from 30 feet to 20 feet.
- Because the Preliminary Plan Application was accepted in 2014, this project is being reviewed under the Subdivision Regulations in effect prior to February 13, 2017, and the Zoning Ordinance in effect prior to October 30, 2014 pursuant to Section 59-7.7.1.B of the current Zoning Ordinance.
- This Application has been delayed due to various issues raised by Staff and County Agencies, and subsequent redesigns of the project.

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ATTACHMENTS

1. 2014 Preliminary Plan
2. 2016 Site Plan
3. 2018 Preliminary Plan
4. 2018 Site Plan
5. Precedent Images
6. Correspondence from Community
7. MCDPS Stormwater Management letter dated 4/17/2018
8. MCDOT letter dated 4/16/2018
9. MCDPS Fire Department Access and Water Supply Section letter dated 4/3/2018
10. Preliminary Forest Conservation Plan
11. Final Forest Conservation Plan
12. Arborist's Letter

SECTION 1: RECOMMENDATIONS AND CONDITIONS

Preliminary Plan No. 120150040

Staff recommends approval of Preliminary Plan No. 120150040, including the Preliminary Forest Conservation Plan (PFCP). All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.¹

1. This Preliminary Plan is limited to five residential lots (four one-family semidetached (duplex) lots and one single-family detached lot), and the associated private road and HOA parcel(s).
2. The Applicant must provide a five-foot-wide sidewalk with a tree panel along the north side of Hillery Way.
3. Building permits may only be issued after staging allocation is granted under the Staging Allocation Request Regulations (COMCOR 50.35.02.01A) in the Planning Board approved White Flint Sector Plan Implementation Guidelines (2011).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated April 16, 2018, 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 MCDOT may amend if the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated April 17, 2018, 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 MCDPS – Water Resources Section may amend if the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. The Planning Board accepts the recommendations of the MCDPS – Fire Department Access and Water Supply Section in its letter dated April 3, 2018, and hereby 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 amendments do not conflict with other conditions of Preliminary Plan approval.
8. Prior to submission of any plat, Site Plan No. 820150140 must be certified by M-NCPPC Staff.
9. No clearing or grading of the site, or recording of plats may occur prior to Certified Site Plan approval.

¹ For the purposes 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.

10. All necessary easements must be shown on the record plat.
11. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.
12. The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. 120150040, including the variance request provisions.
13. Prior to approval of the Certified Site Plan, the Applicant must ensure consistency of all details and layout between the Preliminary Plan and the Site Plan, subject to M-NCPPC Staff review and approval.
14. The certified Preliminary Plan must contain the following note:
“Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
15. Prior to the final building inspection for the final residential unit, the Applicant must construct all road improvements within the right-of-way shown on the approved Preliminary Plan to the full width mandated by the master plan and/or to the design standards imposed by all applicable road codes.
16. The Applicant must provide Private Road “Private Alley,” including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the “Private Road”), subject to the following conditions:
 - a. The record plat must show the Private Road in a separate parcel.
 - b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq.
 - c. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code, as may be modified on this Preliminary Plan, or a subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

Site Plan No. 820150140

Staff recommends approval of Site Plan 820150140, including the Final Forest Conservation Plan (FFCP), for a total of five residential units (one-family semidetached (duplex) units, and one single-family detached unit). All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.

1. Preliminary Plan Conformance
The development must comply with the conditions of approval for Preliminary Plan No. 120150040.
2. Forest Conservation
The Applicant must comply with the conditions of the approved Final Forest Conservation Plan No. 820150140.
 - a) Prior to the start of any clearing, grading, or demolition occurring on the Subject Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for .15 acres of mitigation credit.
 - b) The Certificate of Compliance must be recorded in the Montgomery County Land Records prior to any clearing, grading, or demolition occurring on the Subject Property.
 - c) Mitigation for the removal of seven (7) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 66 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Subject Property, as shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector. The trees must be planted within six months of forest conservation inspector approval of tree protection fencing.
 - d) The limits of disturbance (“LOD”) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
 - e) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree protection measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
 - f) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
3. Green Area, Facilities, and Amenities
 - a) The Applicant must provide a minimum of 10,890 square feet of green area (50% of net lot area) on-site.
 - b) Prior to Final Inspection for the final residential unit, the Applicant must construct all streetscape improvements on Hillery Way, including the undergrounding of utilities, and on-site amenities including, but not limited to, pedestrian pathways and public-use space amenities.
 - c) Within one growing season after the final building inspection for the final residential unit, street trees must be planted along Hillery Way and all onsite landscaping must be installed.

4. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to pedestrian pathways, landscaping, hardscaping and green areas.

5. Transportation

The Applicant must construct the private internal alley to applicable Montgomery County Residential Alley MC-200.01 standards, as modified in the Site Plan, and must construct all sidewalks, both on and off the Subject Property, to applicable ADA standards. Before the release of bond or surety, the Applicant must provide MCDPS- Zoning and Site Plan Enforcement Section (Z&SPE) Staff with certification from a licensed civil engineer that all streets and sidewalks have been built to the above standards.

6. Pedestrian & Bicycle Circulation

Prior to final building inspection of the final residential unit, the Applicant must provide a five-foot wide sidewalk with a tree panel along the north side of Hillery Way, a five-foot wide sidewalk along the west side of proposed private alley, and a three-foot wide sidewalk from the proposed private alley to the front of the townhouses.

7. Site Design

a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet 09-ARCH-820150140-006, 09-ARCH-820150140-007, 09-ARCH-820150140-011, 09-ARCH-820150140-012 of the submitted architectural drawings, as determined by Staff.

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 fixtures.
- c) Deflectors will be installed on all fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting public roads and residentially-developed properties.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

9. Site Plan Surety and Maintenance Agreement

Prior to issuance of any building permit, sediment control permit, or Use and Occupancy Permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other 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, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads or alleys and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit 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, provided that the remaining surety is sufficient to cover completion of the remaining work.

10. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

11. 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) Include the stormwater management concept approval letter and other applicable agency letters, development program, and Site Plan and Preliminary Plan resolutions on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that “M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading.”
- c) 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.”
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Prior to Certified Site Plan, the Applicant must work with Staff to:
 - i. Improve the architectural elevations based on the precedents Staff provided to the Applicant;
 - ii. Enhance the landscaping in the open space between Lots 5/6 and Lot 4 and add at least one bench or picnic table; and
 - iii. Diversify the foundation plantings in front of all the residential units.
- g) Ensure consistency of the Mitigation Tree Landscape Schedule on the Landscape Plan with the Mitigation Tree Schedule on the Forest Conservation Plan.
- h) Provide a sidewalk connection between the sidewalk on Lot 6 and the lead walk to Lot 4.
- i) Clarify the extent of the proposed fencing on the west side of the Property and the location of the fence posts.
- j) Include the required and proposed parking on Sheet 1.
- k) Revise the note on the Site Plan sheets stating that the existing HPSV light will be replaced with an LED light as required by MCDOT.
- l)

SECTION 2: SITE DESCRIPTION AND BACKGROUND

Site Vicinity

The Property (Subject Property or Property – outlined in red in Figure 1 below) is approximately 0.5 acres in size and is located at 5421 Hillery Way, on the north side of Hillery Way, 1/8 mile west of Rockville Pike, in Rockville, Maryland. It consists of one parcel (N442) identified as Lot 3, Offutt Estates, as recorded in Plat No. 1985 and Liber 51682 at Folio 11. The Property is bordered by Rockville Pike (MD355) to the east, Edson Lane to the north, Waycroft Way to the west and Hillery Way to the south. The Property fronts on Hillery Way, which is currently a dead-end road.

The neighborhood surrounding the Property is mixed with residential properties zoned R-90 and RT-12.5 to the, east, south and west of the Property. Georgetown Preparatory School also lies to the south of the Property beyond the residential properties. Further west, wedged between the R-90 zoned homes, lies a large area zoned PD-9 (Planned Unit Development Zone). Properties to the north and north-east of the Property are zoned CR (commercial/residential) with the largest parcel being White Flint Mall.



Figure 1: Vicinity Map

Site Description

The Property is currently improved with a detached house that the Applicant proposes to demolish (Figure 2 below). A driveway provides access to the Property from Hillery Way, which terminates in front of the Property with no connection to Waycroft Way. The Property lies in the Lower Rock Creek watershed and contains no forest, streams, wetlands, floodplains, or any associated buffers. The Property is currently served by public water and sewer. The Property is within the 2010 *White Flint Sector Plan* (Sector Plan) area and is zoned RT-12.5.



Figure 2: Aerial view with Property outlined in red

SECTION 3: PROJECT DESCRIPTION

2014 Proposal

The Applicant submitted a Preliminary Plan application on October 30, 2014, and a Site Plan application on May 3, 2016, to subdivide the Property and construct six townhouses with the layouts shown on Figures 3 and 4 below and Attachments 1 and 2.

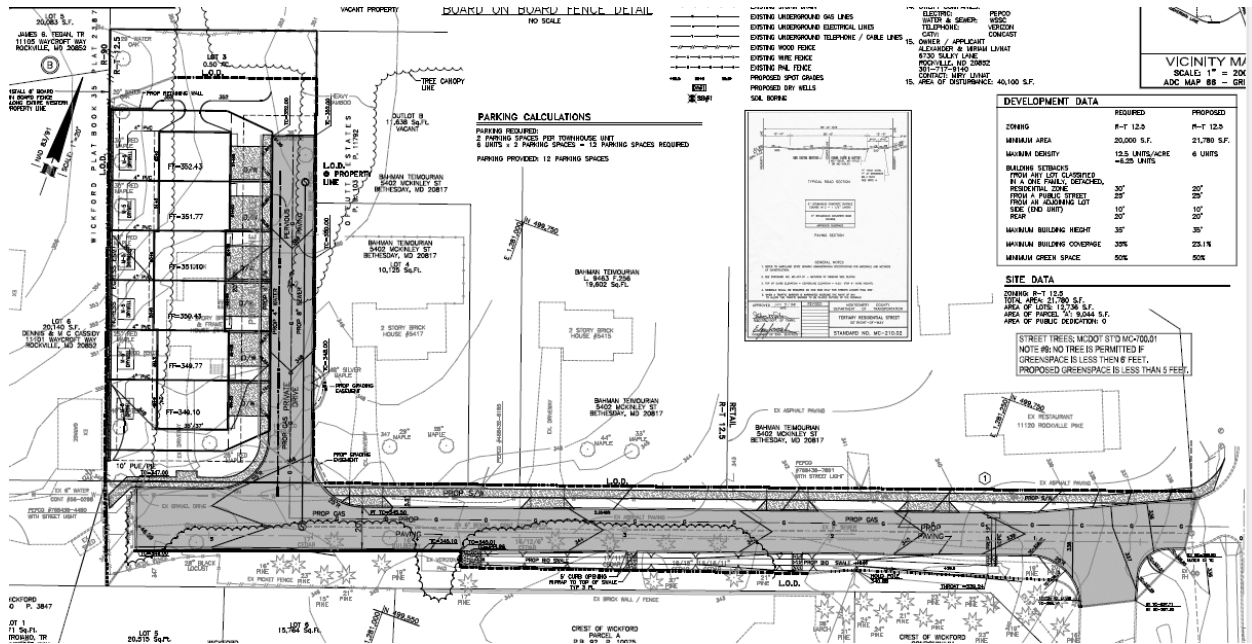
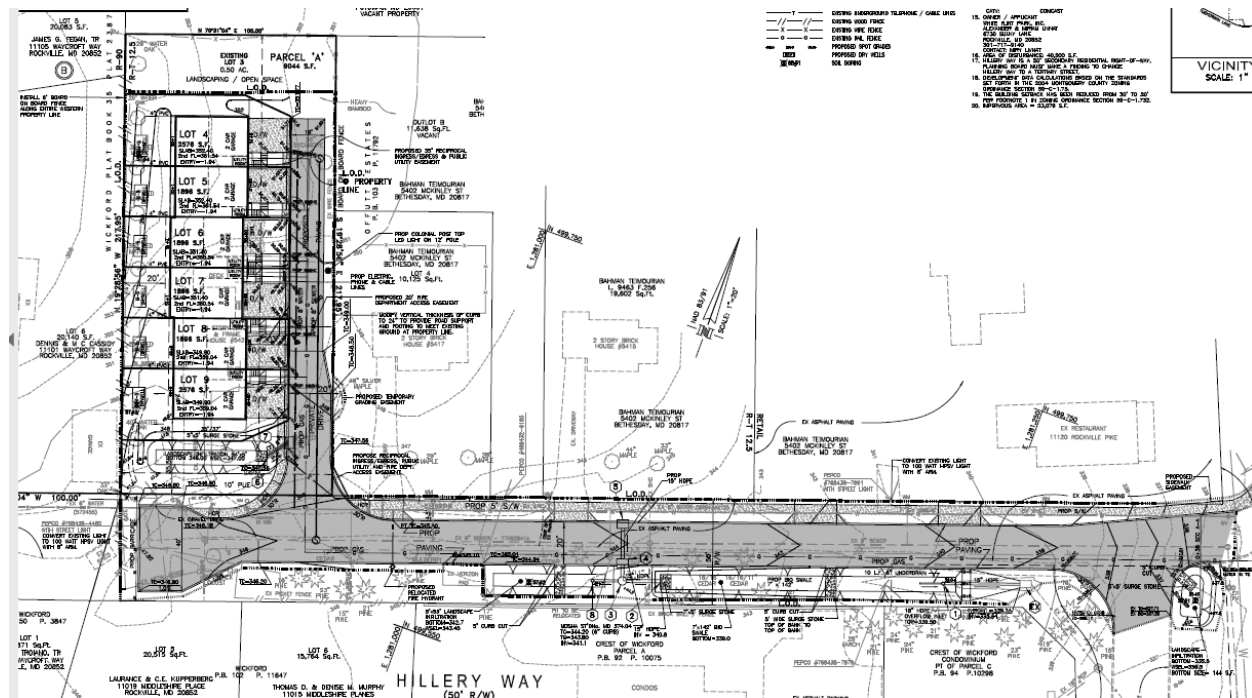


Figure 3: 2014 Preliminary Plan Proposal



However, the 2014 proposal was not supported for several reasons including:

- Rear yard setback requirements: The Applicant was not meeting the rear setback requirements. The Applicant was asking for a waiver of the rear setback requirement, with the justification that the waiver allowed a layout that promoted a more desirable form of development. In addition to the already reduced rear setback, they were proposing second story rear decks to the townhomes, which would be overlooking into the adjacent property.
- Design: The original design showed front loaded townhomes being accessed from a private alley off Hillery Way. The Planning Department does not support front loaded townhomes due to their negative visual impact, and the reduction of pedestrian safety and street level experience.
- Green Area requirement: Due to the proposed rear-loaded configuration, the Applicant had difficulties meeting the Green Area requirement for the zone and was including private/fenced rear-yards and external steps to the townhouse units in their Green Area calculations.

Current Proposal

Following a meeting with Staff on June 8, 2017, the Applicant made substantial changes to their proposal and is now seeking to subdivide and construct four one-family semidetached (duplex) units and one single-family detached house as shown in Figure 5 and 6 below and Attachments 3 and 4. In addition to the residential units, the proposed development will include:

- A private alley off Hillery Way, which will provide vehicular access to the duplexes, the detached house at the rear of the site, and adjoining properties for potential future redevelopment.
- A hammerhead turn around at the end of Hillery Way in accordance with ADA requirements.
- A Design Exception for Hillery Way roadway pavement to not be centered in the right-of-way in order to accommodate a bio-swale along the right-of-way.
- A total of 10 parking spaces within 2-car garages for the five units and two visitor parking spaces along the private alley.
- An off-site sidewalk along Hillery Way to connect with the sidewalk along Rockville Pike (MD 355).
- New pedestrian paths within the Property as follows:
 - Five-foot-wide sidewalk with a 5-foot wide tree-panel along the north side of Hillery Way;
 - Five-foot-wide sidewalk along the west side of the proposed private alley; and
 - Three-foot-wide lead-in sidewalks from the proposed internal 5-foot-wide sidewalks and driveway to the front of the townhouses.
- 10,893 square feet of green space for the residents, including a usable common open area between Lot 4 and Lots 5/6. An access easement to an adjacent property owner (Outlot A) to allow vehicular access from the proposed private alley to connect to the land-locked property to the north.

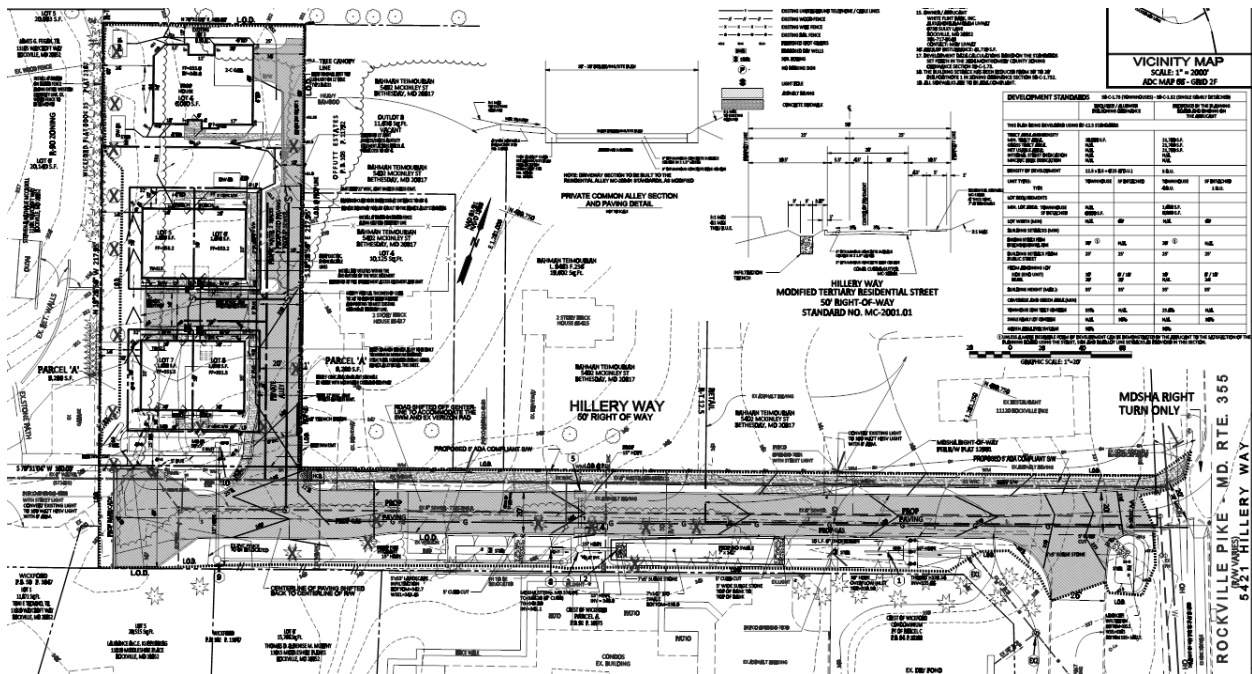


Figure 5: Proposed Preliminary Plan

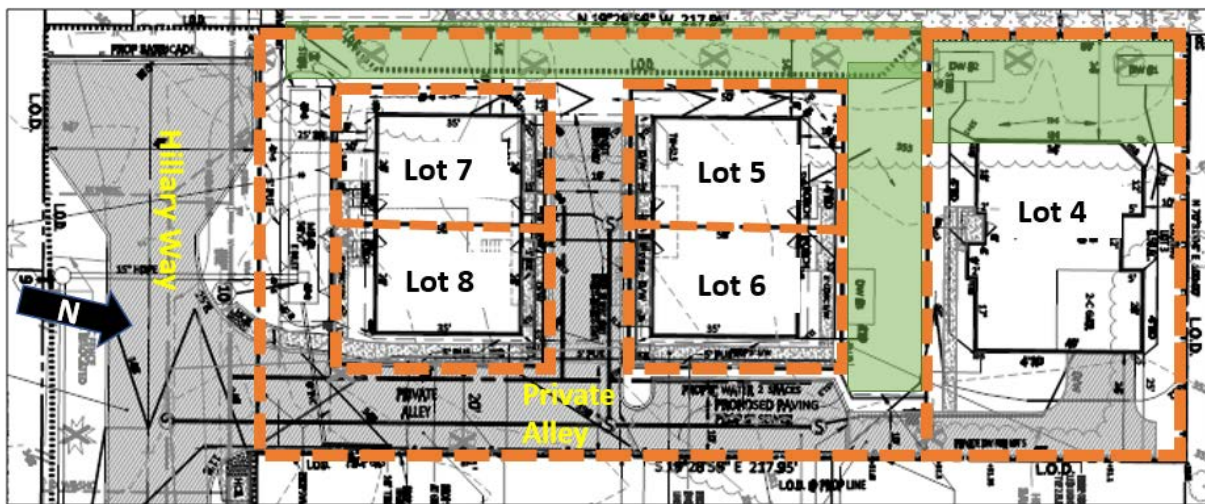


Figure 6: Proposed Site Plan (color added by Staff)

Site Design and Architecture

The size, access constraints, and large green area requirement dictate the Property's unique proposed site design. The Property's relatively small size, its narrow shape, and the required location of the private alley, per Montgomery County's Fire and Rescue, leave few options for logical redevelopment of the Property. Staff encouraged the Applicant to work with owners of surrounding properties in the RT-12.5 Zone to create a larger, more cohesive development, but the Applicant has chosen to move this project forward on the Subject Property.

The Applicant worked extensively with Staff to develop this proposal for two duplexes, an unusual housing type for the County and one of the "missing middle" housing types, and one detached house.

The duplexes are oriented back-to-back with one duplex facing Hillery Way and the other facing a small central open space area. The proposed detached house at the rear of the Property also faces the central open space. A private alley off Hillery Way and a shared driveway provide access to the duplex garages. The private alley off Hillery Way terminates in a private driveway that provides access to the detached house at the rear of the Property.

The central open space area between the detached house and the rear facing duplex will provide shaded outdoor space for residents who have little or no private outdoor space. Staff recommends enhancing the landscaping in the open space area with additional plantings and at least one bench or picnic table. A six-foot board on board fence will be constructed along the western lot line, where the Property abuts detached houses in the R-90 Zone. Trees and shrubs will be planted along the fence line, and two lights on 12-foot poles illuminate the alley and common open area.

The Applicant provided generalized elevations for the proposed houses. While Staff accepts the basic architectural concept, the Site Plan is conditioned on the Applicant working with Staff prior to Certified Site Plan to improve the elevations and provide more details based on precedent images sent to the Applicant during the review process (Attachment 5).



Figure 7: Duplex elevation



Figure 8: Detached house elevation

Community Outreach/Correspondence

The Applicant has complied with all submittal and noticing requirements. The Applicant sent individual letters to neighboring residents and businesses, and on Tuesday August 26, 2014, held the required pre-submission meeting at the Davis Library for the Preliminary Plan. The pre-submission meeting for the Site Plan was held on Monday, April 18, 2016, again, at the Davis Library.

The Montgomery County Planning Board Regulation – Administrative procedures for Development Review - Section 7. Documentation of Notice (September 1, 2017) states that *“If an application is pending for more than one year, the applicant must update the notice list and re-send notice (with the latest plan drawings) to each party on the updated list before the plan is scheduled for Board action”*. In accordance with this requirement the applicant issued new notices on May 18, 2018.

Staff received two letters raising questions and concerns about the proposed development, one from the Wickford Community Association and one from Crest of Wickford (Attachment 6). A summary of issues and responses from Staff are included below.

- Concern about Hillery Way design, traffic, parking, and maintenance

Staff Response:

- The entire length of Hillery Way from Rockville Pike to the end, on the north and south sides, will be posted for no parking as mandated by the Montgomery County Fire Marshal. Each of the five proposed units will provide two car garages and there are two visitor parking spaces in the private alley off Hillery Way.
- The traffic statement provided by the Applicant addresses the five proposed units, and traffic analysis will be required if other properties along Hillery Way propose redevelopment.
- MCDOT has confirmed that the existing light on Hillery Way is currently High-Pressure Sodium Vapor (HPSV) and that the Applicant will be required to update the lighting to LED.
- The proposed turnaround at the end of Hillery will be built to the required 48’ MC Road Code Standard No. MC-223.01, Figure 9 below, as required by MCDOT and MCDPS Fire and Rescue.

- The County is responsible for right-of-way maintenance, including the stormwater management facilities.

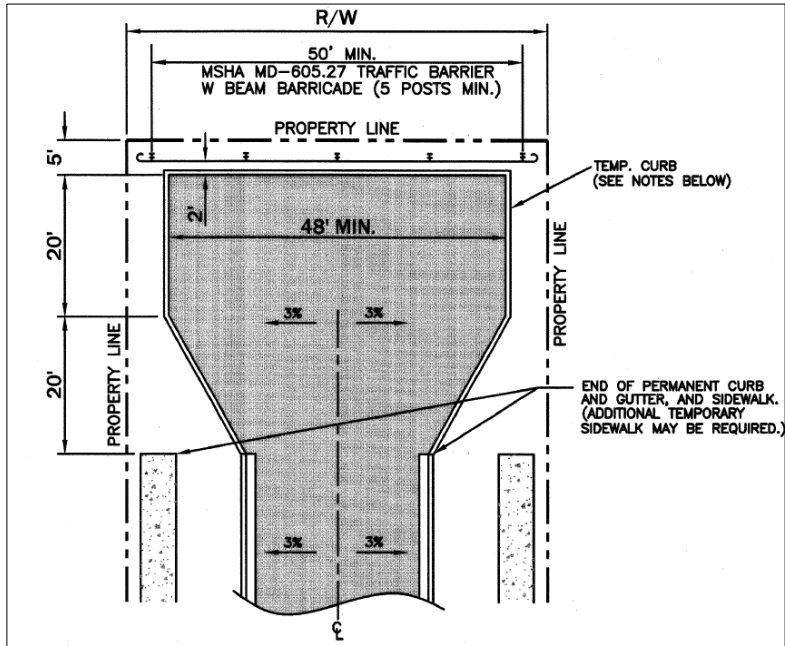


Figure 9: 48' MC Road Code Standard No. MC-223.01

- Height of the duplexes

Staff Response: The height of the duplexes may not exceed 35 feet, as required by the Zoning Ordinance for the RT-12.5 Zone. Height is measured to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof as shown on the architectural elevation.

- Protection of existing trees and replanting of vegetation

Staff Response:

- The Forest Conservation Plan shows the trees as required by the forest conservation law. All trees and other features within the Limits of Disturbance in the right of-way will be removed. The forest conservation plan shows tree protection measures for the trees to be retained on the south side of Hillery Way, and the M-NCPPC forest conservation inspector may require further tree protection measures in the field. Tree protection measures will be inspected by the Forest Conservation Inspector prior to construction.
- The Applicant must plant twelve, 3-inch caliper trees and six, 5-inch caliper trees, to mitigate for the variance trees that will be removed.

- Fence design along the western side of the proposed development and the design of the barricade at the end of Hillery Way

Staff Response:

- The Applicant will be required to show details about fence design and the extent of the fence along the Property line prior to Site Plan Certification. DPS and DOT will determine if the fence at the end of Hillery Way can remain or if it can be replaced since it is within the right-of-way.
- The barricade required by MCDOT is solid steel.

- Maintenance of stormwater management infrastructure

Staff response:

- The County is responsible for the maintenance of stormwater management systems within the public right-of-way.
- The lots will be developed as a HOA community which will be responsible for the maintenance of all the common areas on the property, and the Department of Environmental Protection is responsible for maintenance of stormwater management facilities on private property.

Agency Correspondence

This Application has been reviewed by other applicable County agencies including:

- Montgomery County Department of Permitting Services – support this application and approved the Stormwater Management Plan as set out in their letter dated April 17, 2018 (Attachment 7);
- Montgomery County Department of Transportation – support this application as set out in their letter dated April 16, 2018 (Attachment 8);
- Montgomery County Department of Permitting Services Fire Department Access and Water Supply – support this application as set out in the approved Fire Department Plan and their letter dated April 3, 2018 (Attachment 9).

SECTION 4: PRELIMINARY PLAN ANALYSIS AND FINDINGS

Chapter 50-Subdivision of Land Regulations in effect February 12, 2017, requires the Planning Board to make the following findings to approve a Preliminary Plan:

Sector Plan Recommendations and Conformance

The Property is located within the 2010 *White Flint Sector Plan*. The Sector Plan's vision is to establish policies for "...transforming an auto-orientated suburban development pattern into an urban center of residences and businesses where people walk to work, shops and transit".

The Property is identified in Block 5: Hillery Way in the NoBe (North Bethesda) District of the Sector Plan. The Sector Plan recommends the properties along Hillery Way, including the Subject Property and adjacent parcels, to be rezoned to the RT 12.5 Zone in order for the new residential uses to provide a "transition between the existing residential communities and the commercial uses along Rockville Pike" (p 34). The Applicant's proposed development for the site with townhouses and a single-family dwelling are consistent with the Sector Plan since it recommends that "townhouse development will allow a transition to the existing community" (p.37).

The Sector's Plan's vision, like the 2003 Ten-Year Transportation Policy Report also "supports land use policies that promote new opportunities for living closer to work, especially near Metrorail stations" (p 7). The Property is approximately 0.7 miles from the White Flint Metro Station with bus services to the Metro station along Rockville Pike.

Staff finds the Preliminary Plan to be in substantial conformance with the applicable recommendations of the Sector Plan.

Since the Property is located within the White Flint Metro Station Policy Area, it must adhere to the density allocation procedures established in the Planning Board approved White Flint Implementation Guidelines (2011).

Adequate Public Facilities

Transportation infrastructure and other public facilities are adequate to support and service the proposed development.

Transportation

Sector-Planned Roadways, Bikeway, and Transitway

In accordance with the 2010 *White Flint Sector Plan*, 2005 *Countywide Bikeways Functional Master Plan*, draft *Bikeways Master Plan*, and 2013 *Countywide Transit Corridor Function Plan*, the master-planned transportation facilities are as follows:

1. Hillery Way is not listed in the 2010 *White Flint Sector Plan* but is designated in the Road Code as a tertiary residential street with a 50-foot wide right-of-way. The Applicant is proposing a turnaround at the western terminus of Hillery Way as shown above on Figures 5 and 6 above and Attachments 3 and 4.

2. Nearby Rockville Pike (MD 355) is designated in the Master Plan as a six-lane divided major highway, M-6, with a recommended 150-foot wide right-of-way which can be expanded to 162-foot wide right-of-way via future reservations.
3. The 2010 *White Flint Sector Plan* recommends a shared-use path, LB-5, along Rockville Pike. The Planning Board approved draft *Bikeways Master Plan* shows a sidepath along the west side of Rockville Pike.
4. The 2013 *Countywide Transit Corridors Functional Master Plan* recommends Bus Rapid Transit service along Corridor No. 4, MD 355 South, between the Friendship Heights Metrorail Station and the Rockville Metrorail Station. The MD 355 South Corridor segment at Hillery Way recommends that buses operate in two dedicated Bus Rapid Transit (BRT) lanes within the master-planned right-of-way as follows:
 1. Along the 150-foot-wide right-of-way from Hillery Way to Grosvenor Lane; and
 2. Along the 150-foot-wide (162 via future reservations) right-of-way from Hillery Way to Edson Lane.

The 2013 *Countywide Transit Corridors Functional Master Plan* also recommends two BRT stations at the MD355 intersections of Security Lane and the Grosvenor Metrorail Station. Hillery Way is located half-way between these two proposed BRT stations. MCDOT has identified several conceptual alternatives for bus rapid transit on MD 355 and is now moving toward a recommended alternative.

As set out in Section 3 of this Staff Report, the Applicant is proposing a private alley off Hillery Way, which will provide vehicular access to the semi-detached (duplex) units and the detached house at the rear of the site.

Public Transit Service

Two Ride On bus routes operate along Rockville Pike and provide service to Hillery Way:

- Ride On Route 5 operates on half-hour headways between the Silver Spring Metrorail Station and the Twinbrook Metrorail Station on weekdays and weekends.
- Ride On Route 46 operates on half-hour headways between the NIH/Medical Center Metrorail Station and the Shady Grove Metrorail Station on weekdays and weekends.

Pedestrian Facilities

There are currently no sidewalks along Hillery Way, however, the Applicant proposes the pedestrian facilities listed below:

- Five-foot-wide sidewalk with a 5-foot-wide tree panel along the north side of Hillery Way;
- Five-foot-wide sidewalk along the west side of the proposed private alley; and
- Three-foot-wide lead-in sidewalks from the proposed internal 5-foot-wide sidewalks and driveway to the front of the townhouses.

Transportation Adequate Public Facilities Review

For the transportation test, this Application was reviewed under the previous 2012-2016 Subdivision Staging Policy (SSP) (i.e., adopted under Montgomery County Council Resolution No. 17-601) because

the Preliminary Plan application was filed prior to January 1, 2017 (and before the current 2016-2020 SSP was adopted by the County Council in November 2016).

Local Area Transportation Review (LATR)

Under the previous 2012-2016 SSP, the LATR test analyzed peak-hour “vehicle” trips rather than “person” trips. The table below shows the existing and projected number of peak-hour vehicular trips to be generated by the proposed development during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.):

Land Use	No. of Units	Weekday Peak-Hour	
		Morning	Evening
Existing Land Uses			
Single-Family Detached Unit	1	1	1
Proposed Land Uses			
Single-Family Attached Units (townhouses)	4	2	3
Single-Family Detached Unit	1	1	1
Net Increase	+4	+2	+3

The Applicant is not required to submit a traffic study to satisfy the LATR test because the proposed land use generates fewer than 30 total vehicular peak-hour trips within the weekday morning and evening peak periods under the previous standard (rather than 50 peak-hour person trips under the current standard). Therefore, a traffic study is not required, and the LATR test is satisfied.

Transportation Policy Area Review (TPAR) and Transportation Impact Tax

Under the previous 2012-2016 SSP, the Preliminary Plan application is subject to the Transportation Policy Area Review (TPAR) mitigation payment. However, under the current 2016-2020 SSP, the building permit will be filed after March 1, 2017; thus, the Applicant will be required to pay the updated General District Transportation Impact Tax. The timing and amount of the payment will be in accordance with that in Chapter 52 of the Montgomery County Code as amended.

Schools

Schools Test

The Property is located within the service area boundaries of the Walter Johnson High School Cluster, Tilden Middle School and Garrett Park Elementary School. Based on the school cluster and individual school capacity analysis performed, using the FY2018 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application. However, the proposed development includes one single-family detached and four single-family attached dwelling units on a Property with one existing single-family detached unit. With a net of four new single-family attached units, the proposed application is estimated to generate zero new elementary school students, middle school students, and high school students. The full school analysis is set out below:

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 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.

Per Unit Student Generation Rates

	Elementary School	Middle School	High School
SF Detached	0.204	0.111	0.150
SF Attached	0.234	0.111	0.147
MF Low- to Mid-Rise	0.212	0.084	0.112
MF High-Rise	0.072	0.029	0.038

The proposed project includes one single family detached and four single family attached dwelling units on a property with one existing single family detached unit. With a net of four new single family attached units, the proposed project is estimated to generate the following number of students:

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Attached	4	0.234	0.936	0.111	0.444	0.147	0.588
TOTAL	4		0		0		0

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

Cluster Adequacy Test

The project is located in the Walter Johnson High School Cluster. Based on the FY18 Annual School Test results, the student enrollment and capacity projections for the WJ Cluster are noted in the following table:

School Level	Projected Sept. 2022 Enrollment	100% Projected MCPS Program Capacity, 2022	Cluster % Utilization 2022-2023	Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
Elementary	4,648	4,541	102.4%	5,450	4,648
Middle	2,326	2,429	95.8%	2,915	2,326
High	3,024	2,546 ²	118.8%	3,056	3,024

² The projected cluster high school capacity of 2,321 has been modified to reflect the impact of a 10-classroom placeholder solution at Walter Johnson High School.

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the last column, the projected enrollment plus the estimated impact of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Garrett Park ES and Tilden MS, respectively. Based on the FY18 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected Sept. 2022 Enrollment	100% Projected MCPS Program Capacity, 2022	School % Utilization 2022-2023	Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
				120% Utilization	Seat Deficit	
Garrett Park ES	894	776	115.2%	932	886	894
Tilden MS	1,164	1,200	97.0%	1,441	1,380	1,164

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and if the school seat deficit meets or exceeds 110 seats for the elementary school or 180 seats for the middle school. If a school’s projected enrollment exceeds both triggers, 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 projected enrollment plus the estimated impact of this application exceeds the Garrett Park ES seat deficit threshold but not the 120% utilization threshold for the school. The projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for Tilden

MS. Therefore, there is sufficient capacity at these schools to accommodate the estimated number of students generated by this project.

Other Public Facilities and Services

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

Environment

Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420170350) on December 22, 2016. The site lies in the Lower Rock Creek watershed and contains no forest, streams, wetlands, or floodplains, or any associated buffers.

Forest Conservation

The site is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan (Attachment 10) in conjunction with the Preliminary Plan and a Final Forest Conservation Plan (Attachment 11) in conjunction with the Site Plan. There is no forest onsite but a 0.15-acre afforestation requirement. The afforestation requirement will be met at an offsite Forest Mitigation Bank.

Forest Conservation Variance

Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request to remove seven trees and to impact, but not remove, three trees that are considered high-priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

Unwarranted Hardship for Variance Tree Impacts

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The requested variance is necessary due to the need to demolish the existing house, construct a public road, and the infill nature of this development. The site is constrained by existing development on all sides, which limits flexibility in grading.

Variance Tree Tables

Removals

ID	Species	Size	Condition	Impacts
#1	Silver maple	49"	Fair	Impacts from shared driveway and utilities.
#3	Water oak	33"	Good	Impacts from new roadway construction and proposed building construction.
#4	Silver maple	37"	Good	Impacts from new roadway construction, demolition of existing development.
#6	Red oak	40"	Good	Impacts from demolition of existing development and construction of proposed building construction.
#7	Tulip poplar	31"	Good	Impacts from proposed building construction and stormwater management.
#8	Sycamore	46"	Good	Impacts from proposed building construction and stormwater management.
#10	Tulip poplar	40"	Good	Impacts from shared driveway and proposed building construction.

Impacts

ID	Species	Size	Condition	Impacts
#15	Silver maple	33"	Fair/Good	Impacts from sidewalk and roadway construction.
#16	Silver maple	44"	Fair/Good	Impacts from sidewalk and roadway construction.
#26	Red maple	48"	Good	Impacts from proposed building construction.

Variance Findings

Based on the review of the variance request and the proposed Preliminary Forest Conservation Plan, Staff recommends the Board make the following findings:

1. *Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to demolish the existing single-family home and build housing at the density recommended in the master plan. Disturbance has been minimized to retain trees where possible. The size and configuration of the site preclude alternative site designs that would allow the variance trees to remain undisturbed.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the site.

- 3. The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the location of trees and the proposed development and not a result of land or building use on a neighboring property. The impact to the trees is the minimum disturbance necessary to demolish the existing single-family home and build five homes, with associated infrastructure.

- 4. Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Applicant will plant twelve, 3" caliper and six, 5" caliper native shade trees to replace the form and function of the variance trees proposed for removal. In addition, the site will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove nine trees. The seven trees (listed in the removal table above) will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree. The Applicant will plant twelve, 3-inch caliper trees and six, 5-inch caliper trees, which are shown on the Final Forest Conservation Plan.

County Arborist's Recommendation of the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The County Arborist has reviewed the variance request and recommended approval with mitigation (Attachment 12).

Variance Recommendation

Staff recommends that the variance be granted.

Stormwater Management

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS - Water Resources Division on April 17, 2018. Stormwater treatment will be accomplished using porous pavement, proprietary filtration structures, and micro-bioretenion facilities.

Compliance with the Subdivision Regulations

This Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Code. The Zoning Ordinance requires that the detached house satisfy the standards of the R-60 zone, while duplexes are subject to the standards of the RT-12.5 Zone. The proposed layout of the subdivision, including size, width, shape, orientation and density and location of the lots, meets all the requirements of the RT-12.5 Zone for the duplexes (Table 1), and the R-60 zone for the detached house (Table 2).

For a townhouse or duplex in the RT-12.5 Zone, a 30-foot building setback is required from a lot with a detached dwelling unit or a lot in a one-family detached residential zone, *“unless a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board using the street, side and rear lot line setbacks as provided in this section.”* Staff supports the 20’ setback from the detached residential zone because the proposed development is the best layout for the Property considering its size and RT-12.5 zoning. Further, the Applicant reduced the total number of units from the 2014 proposal, which has created additional open space on the site.

There will be adequate public facilities to serve the proposed lots and the Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan and Site Plan (Attachment 7, 8 and 9).

Table 1: Applicable Development Standards, RT-12.5 for Duplexes		
Section 59-C-1.73		
Standard Method Development		
	Required / Allowed	Proposed
Track Area and Density		
Minimum tract area (sq. ft.)	20,000 SF	21,780 SF
Maximum density of development	12.5x0.5 = 6 D.U.	5 D.U.
Building Setbacks (Minimum, in Feet)		
From any detached dwelling lot or land classified in a one-family, detached, residential zone	30' ¹	20'
From any public street	25'	25'
From an adjoining lot – Side (end unit)	10'	N/A (no adjoining lot)
From an adjoining lot – Rear	20'	N/A (no adjoining lot)
Maximum Building Height (in feet)		
For a main building	35'	35'
For an accessory building	25'	N/A
Coverage and Green Area		
Maximum percentage of track that may be covered by buildings	35%	25.6%
Minimum percentage of tract that must be devoted to green area	50%	50%
Parking		
Off-Street parking	8 (2 per unit)	10 (2 per unit in garage and two in alley)
¹ Unless a more desirable form of development can be demonstrated by the applicant to the satisfaction of the planning board using the street, side and rear lot line setbacks as provided in this section.		

**Table 2: Applicable Development Standards, R-60
for dwelling unit, one-family detached
Section 59-C-1.32
Standard Method Development**

	Required / Allowed	Proposed
Lot Area and Width		
Minimum net lot area- For one-family detached dwelling	6,000 SF	6,000 SF
Minimum lot width – For one-family detached dwelling	60'	60'
Minimum lot width at existing or proposed street line	25'	25'
Building Setbacks (Minimum, in Feet)		
Minimum setback from street	25'	25'
Setback from adjoining lot – One Side	8'	8'
Setback from adjoining lot – Sum of both	18'	18'
Setback from an adjoining lot – Rear	20'	24'
Maximum Building Height (in feet)		
For a main building	35'	35'
Coverage		
Maximum percentage of net lot area that may be covered by buildings.	30%	30%
Parking		
Off-Street parking	2	2

Lot Frontage on a Private Street

Section 50-29 (a) (2) of the Subdivision Regulations requires that individually recorded lots “...shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road”. As reflected in other similar cases approved by the Planning Board, this finding must be based upon the proposed road being fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to the minimum public road standards, except for right-of-way and pavement widths.

The four duplex units and one one-family detached unit have been arranged so that their lots front on to a green area and all units will be served by the private alley off Hillery Way. The private alley will be constructed to the corresponding Montgomery County Road Code Standard for residential alleys MC-200.01 as modified. The proposed private alley will be fully accessible to the public, provide the minimum pavement width and turning radii for emergency vehicles access, and will meet the minimum corresponding public road code standards.

SECTION 5: SITE PLAN ANALYSIS AND FINDINGS

Pursuant to the grandfathering provision of Section 59.7.7.1.B.3 of the Zoning Ordinance, this application is to be reviewed under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014, since the original application was submitted on October 30, 2014.

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

This section is not applicable as there is not a development plan, diagrammatic plan, schematic development plan, or project plan that applies to this Property.

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

This Property is located in the RT-12.5 Zone, which allows semidetached (duplex) dwelling units and single-family detached units as permitted uses. The proposed development meets the development standards and parking requirements of the RT-12.5 zone as demonstrated in the Preliminary Plan section of this report. Since less than 20 units are proposed in this project, Moderately Priced Dwelling Units (MPDUs) are not required. There is not an urban renewal plan that applies to this Property.

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

Location of buildings and structures

As conditioned, the location of the buildings allows for safe, adequate, and efficient vehicular, pedestrian and fire access to each lot. The orientation of the proposed houses, with the side of the units facing the abutting existing detached houses, is the ideal orientation for compatibility because the proposed duplex decks will not face directly onto existing back yards. Also, the duplex facing Hillery Way will look similar in character to the nearby-single family detached homes.

Open Space, landscaping and recreation facilities

The proposed open space area between the duplexes and the detached house provides space where members of this small community can congregate outdoors since the duplexes do not have any yard space and the detached house has minimal yard space. Staff recommends that the Applicant be required to enhance this open space area with additional landscaping and a bench or picnic table. The adjacent single family residential property in the R-90 Zone is well buffered from the new development by a six-foot board on board fence and a landscape screen consisting of trees and shrubs. The residential property to the east is in the RT-12.5 Zone, and is likely to redevelop in the future, so no landscape buffer is provided. The photometric plan demonstrates that the illumination will be 0.5 footcandles or less at the Property line. As the proposed development is less than 20 units, recreation facilities are not required.

Circulation

As described in the Preliminary Plan section of the report, the proposed circulation system in and around the development is safe, adequate and efficient. The location of the proposed alley allows for efficient vehicular and fire/safety access, and can be shared with the abutting property to the east, should that property owner choose to redevelop.

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

The proposed single-family duplex units and detached house are inherently compatible with the character of the adjacent single-family detached houses. Further, the orientation of the proposed houses, with the side of the units facing the abutting existing detached houses, is the ideal orientation for compatibility because the proposed duplex decks will not face directly onto existing back yards. Also, the duplexes facing Hillery Way will look similar in character to the nearby single-family detached homes.

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.*

As discussed in the Preliminary Plan section, the site plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

SECTION 6: CONCLUSION

The Applications meet all requirements established in the Subdivision Regulations and the Zoning Ordinance. Access and public facilities will be adequate to serve the proposed lot, the use conforms with the Sector Plan and the general requirements of Chapter 59, and the Applications have been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Staff recommends approval of the Preliminary Plan and Site Plan, with the conditions listed at the beginning of the Staff Report.