



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

MCPB No. 18-097  
Preliminary Plan No. 120170240  
Seneca Farms  
Date of Hearing: September 27, 2018

OCT 25 2018

**RESOLUTION**

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

WHEREAS, on June 9, 2017, Seneca Farms, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 27 lots on 136.67 acres of land in the Rural Cluster (RC) zone, located on the west side of Seneca Road (MD Rt. 112), approximately 900 feet north of Springfield Road ("Subject Property"), in the Rural West Policy Area and the 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170240, Seneca Farms ("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 September 16, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 27, 2018, 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 September 27, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 5-0, Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzalez, and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170240 to create 27 lots on the Subject Property, subject to

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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

the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to 27 lots for 27 detached houses.
2. Include the stormwater management concept approval letter and Preliminary Plan Resolution on the certified preliminary plan cover sheet(s).
3. On the Certified Preliminary Plan, the Applicant must replace the 50-foot wide scenic easement shown on Lots 1 and 2 with a 50-foot building restriction line.
4. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120170240, approved as part of this Preliminary Plan:
  - a. Prior to Certification of the Preliminary Plan, the Applicant must revise the Preliminary Forest Conservation Plan to modify the forest conservation data table to be consistent with the forest conservation worksheet.
  - b. Prior to Certification of the Site Plan, the Applicant must obtain M-NCPPC approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
  - c. Prior to record plat, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting, and stream valley buffers, as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded among the Montgomery County Land Records by deed prior to the start of any demolition, clearing or grading on the Subject Property. The Liber Folio of the Category I Conservation Easement must be referenced on the record plat(s).
  - d. Prior to any clearing, grading, or demolition on the Subject Property, the Applicant must provide financial surety to guarantee the forest planting on the Subject Property, as specified on the approved Final Forest Conservation Plan, in a form acceptable to the M-NCPPC Office of the General Counsel.
  - e. Prior to any clearing, grading or demolition on the Subject Property, the Applicant must submit a Maintenance and Management Agreement to Staff for the required forest planting on the Subject Property as shown on the approved Final Forest Conservation Plan. The Agreement must be in a form approved by the M-NCPPC Office of the General Counsel.

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<sup>1</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.

- f. The Final Sediment and Erosion Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
  - g. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
  - h. The Applicant must install permanent conservation easement signage along the perimeter of the Category I Conservation Easement. Signs must be installed a maximum of 100 feet apart with additional signs installed where the easement changes direction, or at the discretion of the M-NCPPC forest conservation inspector. The M-NCPPC forest conservation inspector is authorized to determine the timing of sign installation.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 12, 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 may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
7. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its correspondence dated September 13, 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 may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
9. 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 December 8, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
10. The Planning Board accepts the recommendations of MCDPS – Well and Septic Section in its letter dated August 24, 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 may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

11. The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated February 8, 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.
12. The Applicant must dedicate and show on the record plat(s) the following dedications:
  - a. Forty feet (40) from the existing pavement centerline on Seneca Road as shown on the Certified Preliminary Plan.
  - b. Seventy-four (74) feet of right of way for the new road as shown of the Certified Preliminary Plan.
13. The Applicant must construct all road improvements within the rights-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. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, “To Be Constructed By \_\_\_\_\_” are excluded from this condition.
14. The Applicant must provide a five-foot wide shoulder for a future bike lane along the frontage of Seneca Road.
15. The Applicant must construct a five-foot wide sidewalk on both sides of the proposed new public road.
16. The record plat must show necessary easements.
17. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
18. The record plat must have the following note: “The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed.”
19. Prior to recordation of the plat, the Applicant must grant to M-NCPPC a rural open space easement over no less than 60% of the net tract area of the Subject Property as shown on the Preliminary Plan and record the easement, in a form approved by the M-NCPPC Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).

20. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.

21. 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.*

22. No clearing or grading of the site or recording of plats prior to certified site plan approval.

23. Final approval of the number and location of dwelling units, site circulation, sidewalks, and paths will be determined at site plan.

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 density 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.*

a. *The block design is appropriate for the development or use contemplated*

The block design is appropriate for the development of single-family detached dwelling units under the optional method in the RC zone. The 27 lots will line both sides of the public street in a single tier which is very similar to the design of the two subdivisions south of the Subject Property. The block is broken up by several 10-foot-wide access easements and an open lawn area that will allow pedestrians to access the rural open space.

b. *The lot design is appropriate for the development or use contemplated*

As shown on the Preliminary Plan, the lot design is appropriate for the development given the development standards of RC zone under the optional method of development. The layout of the subdivision takes advantage of the

existing topography of the land, with the lots clustered on the northern half of the Subject Property along a ridgeline, away from the existing stream and priority forest. Clustering the lots in this way results in a large contiguous open space parcel and preservation of sensitive environmental features. The average lot size is 1.8 acres, ranging in size from 1.11 acres to 3.83 acres, which is generally consistent with existing development patterns in the surrounding area. Each lot provides enough room to accommodate a well, a septic reserve area, stormwater management and a reasonably sized house. The size, width, shape, orientation and density of the lots are appropriate for the location of the subdivision, considering the recommendations included in the Master Plan.

- c. *The Preliminary Plan provides for required public sites and adequate open areas*

Master Planned Public Sites

There are no master-planned public sites on the Subject Property.

Local Recreation

The Applicant has provided a recreation guidelines analysis as part of the Preliminary Plan review to demonstrate that adequate space has been allotted to accommodate the recreational needs of the community with the lot configuration. The recreational guidelines have been satisfied with the amenities shown, including a 15,000 square foot open lawn area (active recreation), and a 1.2-mile pedestrian trail system (passive recreation) within the natural area. The recreational amenities and open areas will be analyzed further as part of the site plan review.

Area for public roads and associated utilities and storm drainage

In reviewing the Preliminary Plan, the relationship between the approved subdivision and other existing, planned and platted transportation facilities was considered. As conditioned, the Applicant will dedicate an adequate amount of land to accommodate the proposed public road and right-of-way for MD-112. The necessary land required to provide pedestrian trails, stormwater management and utility easement has also been identified on the Preliminary Plan.

- d. *The Lots and Use comply with the basic requirements of Chapter 59*

The lots were reviewed for compliance with the dimensional requirements for the RC zone under the Optional Method - Cluster as specified in the Zoning Ordinance. The lots as approved will accommodate a building area so that a house may meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

After Preliminary Plan, a Site Plan is required because the Application is Optional Method – Cluster. As part of the Site Plan, the Applicant will be required to demonstrate, in detail, how the design of the subdivision meets the intent of the zone through details such as building materials, façade and landscaping.

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

The Subject Property is located in Darnestown, the westernmost portion of the 2002 Potomac Subregion Master Plan. It is in the semi-rural lower reach of the Seneca Creek Valley. The Master Plan makes recommendations for this area that are “designed to preserve, protect and enhance Darnestown’s unique residential and community character and to review major undeveloped sites for their potential to contribute to park land and open space.” The Master Plan calls for development patterns and density that provide a transition between the suburban areas to the east and the prime agriculture area to the west.

The Seneca Farms community will develop under the standards of the Rural Cluster Zone (Optional Method Cluster), which requires that 60 percent of the subdivision be devoted to rural open space. The Preliminary Plan shows an area that slightly exceeds the 60 percent requirement and largely consists of wooded stream valleys and open pastures. This open space meets the recommendations of the Master Plan by protecting environmentally sensitive areas and providing additional open space in this largely rural section of the county. It will also contribute to the pattern of rural residential development interspersed with open space that contributes to the rural character of this part of Darnestown. As proposed, the Preliminary Plan substantially conforms to the Master Plan recommendations.

The Subject Property is located on Seneca Road approximately 900 feet northeast of Springfield Road in the Darnestown/Potomac Area. Seneca Road is an Arterial Road (A-29) with two lanes and a master planned right-of-way of 80 feet. The Applicant will dedicate 40 feet from the centerline of the road to comply with the Master Planned right-of-way width.

The 2005 Countywide Bikeways Functional Master Plan recommended bike lanes along Seneca Road and the 2018 Draft Bicycle Master Plan recommends bikeable shoulders. The Applicant will comply with these requirements by widening the roadway pavement for a five-foot wide shoulder along their frontage of Seneca Road.

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

#### Roads and Other Transportation Facilities

As conditioned in this Resolution, the Application provides adequate vehicular and pedestrian access. The Applicant must provide 5-foot wide sidewalks on both sides of the cul-de-sac to provide adequate pedestrian circulation. The sidewalks are essential for safe pedestrian movement along this overlength cul-de-sac.

#### *Existing Facilities*

There are no existing bike facilities around the Subject Property, no sidewalks along Seneca Road or other nearby residential streets, and there are no public transit routes that serve Seneca Road or the Subject Property.

#### *Public transportation infrastructure*

Access to the 27 single-family dwelling units will be provided by a new public open-section Tertiary Residential Street within a 74-foot wide dedicated right-of-way. As conditioned, sidewalks on both sides of the road will improve pedestrian safety and connectivity within the subdivision along the road, and between the units and the pedestrian trail system that is being provided in the rural open space. In particular, the grant of an overlength cul-de-sac comes with a tradeoff of increased traffic speeds along the extended straight roadway length thereby increasing the need for a safe haven for pedestrians and young bicyclists. A discussion of the overlength cul-de-sac follows:

Chapter 50.4.3.E.2.e in the County Subdivision Code states the following:

*The Board must not approve any road that does not connect to another road at its beginning and end, unless a determination is made that:*

- i. a through road is infeasible due to a property's unusual shape, size, topography, environmentally sensitive areas, or the characteristics of abutting property;*
- ii. the road provides access to no more than 75 dwelling units;*
- iii. the road is properly terminated in a cul-de-sac or other turnaround; and*
- iv. the road is less than 500 feet in length, measured along its centerline to the nearest through street, unless the Board determines that a longer length is necessary because of the unusual shape, size, topography, or environmentally sensitive areas of the subdivision.*



The configuration of Subject Property with limited frontage makes it infeasible to provide two points of access to adjacent roadways. All of the surrounding properties are developed and platted; none of the adjacent developments' roads were planned to extend or connect to the Subject Property. Road extensions to adjacent properties would require highly improbable acquisition of developed lots. Furthermore, given the unique natural features of the Subject Property, any connection to adjacent property would require crossing environmentally sensitive features including riparian forest, streams and wetlands with considerable cost to construct bridges. The Board finds that a non-through road with a length longer than 500 feet is necessary due to the constrained site frontage on Seneca Road and environmental constraints both on the Subject Property and adjacent properties.

#### *MDSHA Improvements*

The Maryland State Highway Administration is requiring the Applicant to construct at least partial acceleration and deceleration lanes to connect Seneca Road to the proposed road per their Access Manual guidelines. In correspondence received on September 13, 2018, MDSHA accepted the modified acceleration/deceleration lanes proposed by the Applicant.

#### Local Area Transportation Review (LATR)

The Preliminary Plan was reviewed using the 2016-2020 Subdivision Staging Policy and associated 2017 Local Area Transportation Review Guidelines. The Application would generate 45 AM and 49 PM weekday peak hour person trips based on the ITE Trip Generation Manual, 9th Edition and adjusted for the Rural West policy area. Because the Application will generate less than 50-person trips, the LATR test is satisfied and a full traffic study is not required.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the subdivision. On-site well and septic systems are proposed to serve each dwelling unit. The use of an on-site well and septic system is consistent with the existing W-6 and S-6 services categories designated for the Property. The Application has been reviewed by MCDPS – Well and Septic Section, which determined the proposed well and septic locations are acceptable as shown on the approved well and septic plan dated August 24, 2018.

The Application has been reviewed by the MCDPS, Fire Code Enforcement Section, which determined that the Subject Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan

dated February 8, 2018. All other public facilities and services are available and will be adequate to serve the development.

**Overview and Applicable School Test**

The applicable annual school test is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018.

**Calculation of Student Generation**

To calculate the number of students generated by the approved 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 in the upcounty region of the County.

*Per Unit Student Generation Rates – Upcounty Region*

	<b>Elementary School</b>	<b>Middle School</b>	<b>High School</b>
<b>SF Detached</b>	0.214	0.123	0.168
<b>SF Attached</b>	0.251	0.116	0.151
<b>MF Low- to Mid-Rise</b>	0.204	0.074	0.099
<b>MF High-Rise</b>	0.074	0.031	0.037

With a net of 27 single family detached units, the project is estimated to generate the following number of students:

<b>Type of Unit</b>	<b>Net Number of Units</b>	<b>ES Generation Rates</b>	<b>ES Students Generated</b>	<b>MS Generation Rates</b>	<b>MS Students Generated</b>	<b>HS Generation Rates</b>	<b>HS Students Generated</b>
<b>SF Detached</b>	27	0.214	5.778	0.123	3.321	0.168	4.536
<b>TOTAL</b>	<b>27</b>		<b>5</b>		<b>3</b>		<b>4</b>

This project is estimated to generate 5 new elementary school students, 3 new middle school students, and 4 new high school students.

**Cluster Adequacy Test**

The project is in the Northwest High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Northwest Cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2023			Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	3,955	3,894	101.6%	4,673	3,960
Middle	2,143	2,300	93.2%	2,761	2,146
High	2,423 <sup>2</sup>	2,241	108.1%	2,690	2,427

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 falls 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 Application.

**Individual School Adequacy Test**

The applicable elementary and middle schools for this project are Darnestown ES and Lakelands Park MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, September 2023				Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus/Deficit	120% Utilization	Surplus/Deficit	
Darnestown ES	288	471	61.1%	+183	566	581	293
Lakelands Park MS	1,158	1,147	101.0%	-11	1,377	1,327	1,161

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* thresholds, then the school service area is placed in a residential development moratorium.

<sup>2</sup> The projected cluster high school enrollment of 2,626 has been modified to reflect the estimated impact of a future boundary change that will reassign students from Northwest HS to Seneca Valley HS upon completion of the programmed revitalization/expansion project at Seneca Valley HS in September 2020.

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 falls below both applicable moratorium thresholds for both Darnestown ES and Lakelands Park MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this Application.

#### **Analysis Conclusion**

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development included in this Application.

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

#### **A. Forest Conservation**

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Preliminary Forest Conservation Plan ("FCP") for the project was submitted with the Preliminary Plan. The net tract area for forest conservation is 136.96 acres. The FCP includes 60.32 acres of existing forest located within and adjacent to the stream valley buffers. The Application will retain 54.88 acres and remove 5.44 acres of forest. The retained forest will be protected in a Category I conservation easement. The proposed forest clearing generates a reforestation requirement of 10.88 acres. The Applicant will meet the planting requirement on-site by planting forest in unforested portions of the stream buffer and areas immediately adjacent to stream buffers and existing forest to be retained. All of the retained and planted forest will be protected in Category I Conservation Easement.

The development is in an agricultural and resource area and therefore must comply with Section 22A-12(f) of the Montgomery County Code. This section of the Code states that for developments in an agricultural and resource area, at a minimum, on-site forest retention must equal 25% of the net tract area. The Application will retain 54.88 acres of on-site forest, or 40% of the 136.96-acre net tract area. Therefore, the Application has demonstrated compliance with this section of the Code.

## B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 13 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that, as stated in the Staff Report, the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

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

Granting the variance will not confer a special privilege on the Applicant. Protected Trees are located in the developable area of the Subject Property, including along the narrow frontage along Seneca Road and the unforested areas outside of the stream buffers. In order to access the Subject Property to develop it, a road will be constructed through this narrow frontage, resulting in impacts to Protected Trees. Additional Protected Trees that are located within the open, developable area of the Subject Property will be impacted by the proposed construction. The development is utilizing the cluster method to avoid and minimize impacts to stream buffers and forest. The development requires construction of one road to access the lots, removal of the ruins of an existing homestead, and grading associated with required utilities, stormwater management, and septic fields to serve the development. There is no community sewer service to the Subject Property, resulting in additional grading to provide septic fields for each lot. The requested removal of and impacts to Protected Trees are due to required improvements that would be necessary under any application for development of the Subject Property, and disturbance within the anticipated developable area of the site. Any development considered for this Subject Property would be faced with the same considerations.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Subject Property conditions, including the location of the Protected Trees within the developable area.

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

The need for a variance is a result of the existing conditions and the design and layout of the Subject Property, and not a result of land or building use on a neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. None of the Protected Trees proposed for removal are located within the stream buffer. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the project to be acceptable as stated in a letter dated December 8, 2017. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Protected Trees – The seven trees subject to the variance provision and proposed to be removed are located within the existing forest. The removal of these trees is incorporated in the “forest clearing” calculations of the Forest Conservation Plan. No additional mitigation for the loss of these trees is necessary as they are accounted for in the forest conservation worksheet as “forest clearing,” and the reforestation requirement of 10.88 acres will be met on-site, mitigating the functions provided by the loss of these trees. Additionally, no mitigation is required for trees affected but not removed. The root systems of these trees will receive adequate tree protection measures allowing the roots to regenerate and the functions provided restored.

### C. Stream Buffer Encroachment

The Application is subject to the *Guidelines for Environmental Management of Development in Montgomery County* (January 2000) (“Environmental Guidelines”), which includes guidance for the protection of streams and their buffers. Section IV-A1 of the Environmental Guidelines allows for some encroachments within the stream buffer under certain circumstances.

The Application will impact the stream buffer to provide a pedestrian access from the development to the proposed Rural Open Space Area. There is an existing stream crossing at this location that was used to access the agricultural field on the south side of the stream. The Application will to maintain this stream crossing to support a natural surface pedestrian trail connection to the Rural Open Space.

Section IV-A1(e) of the Environmental Guidelines includes five factors for consideration when evaluating proposed stream buffer encroachments:

1. *Reasonable alternatives for avoidance of the buffer are not available.*  
The disturbance within the stream buffer cannot be reasonably avoided. The development is surrounded on three sides by stream valley. The development has made use of the cluster option to protect the majority of the stream valley. The Rural Open Space is located in the southern portion of the Subject Property, on the south side of the stream valley that crosses through the site. It is important to provide the new community with a stable access point where residents may cross the stream to enjoy the open space.
2. *Encroachment into the buffer has been minimized.*  
The Application limits the access across the stream to a pedestrian trail that is located at an existing stream crossing previously used to access agricultural fields. The Application has minimized the impacts to the stream buffer by using this existing stream crossing location and proposing only a pedestrian crossing as part of a trail system.
3. *Existing sensitive areas have been avoided (forest, wetlands and their state designated buffers, floodplain, steep slopes, and habitat for rare, threatened, and endangered species and their associated protection buffers).*  
The impacts to existing sensitive areas have been avoided to the greatest extent possible. There are no wetlands, 100-year floodplain, steep slopes, or known habitat for rare, threatened, and endangered species in the location of the encroachment. The majority of the stream buffer will be

protected in a Category I conservation easement, with the exception of this pedestrian stream crossing.

4. *The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tie-outs to existing grades, slope stabilizing BMPs, etc.).*

The area of the stream buffer where the pedestrian crossing is proposed and excluded from the conservation easement is an existing stream crossing. The proposed encroachment is minimal, and this area will likely continue to function in the same manner as it does currently.

5. *The plan design provides compensation for the loss of buffer function.*

The pedestrian crossing will not result in the loss of buffer function because there is an existing crossing in this location utilized to access agricultural fields. Where the Applicant proposes to maintain a stream crossing and exclude 0.09 acres of the buffer from the Category I conservation easement, the current functions provided within the buffer will remain. The natural surface pedestrian trail will minimally impact the stream buffer. The Application will also reforest currently unforested portions of the stream buffer and provide additional protection through conservation easements, which will serve to enhance the overall functions of the stream buffer on the Subject Property.

Therefore, the Board supports the Application's stream buffer encroachment.

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

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 Section on December 8, 2017. The Application will meet stormwater management goals through a variety of techniques including drywells, micro-bioretenion facilities, bio-swales, rain gardens and micro-infiltration trenches.

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; 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



OCT 25 2018 (which is the date that this Resolution is mailed to all parties of  
~~record~~ and ~~OCT 25 2018~~

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 Cichy, seconded by Commissioner Patterson, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, October 18, 2018, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board