



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

MCPB No. 18-118
Preliminary Plan No. 120180180
Ashton Market
Date of Hearing: November 15, 2018

NOV 30 2018

RESOLUTION

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

WHEREAS, on April 23, 2018, Nichols Development Company, LLC. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 20 lots for 20 townhouses, and one lot for a multi-use building with 3 multi-family units and up to 6,800 square feet of commercial and restaurant space, including 12.5 percent MPDUs on 3.04 acres of TF-10 an CRT-0.75, C-0.75, R-0.25, H-35 & the Sandy Spring/Ashton Rural Village Overlay zone zoned-land, consisting of three parcels (P393, P447, P395, Tax Map JT42) and two lots (Lot 2 and Lot 3, Record Plat 1463) located on Porter Road at its intersection with Olney Sandy Spring Road (MD 108), ("Subject Property"), in the Rural East Policy Area and 1998 Sandy Spring/Ashton Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120180180, Ashton Market ("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 November 2, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 15, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES

Approved as to
Legal Sufficiency

Christina Sowa 11/7/18

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Preliminary Plan No. 120180180 to create 21 lots on the Subject Property, subject to the following conditions:¹ Planning Board approval of the Preliminary Plan will vacate a previous preliminary plan approval on a portion of the Subject Property - Preliminary Plan No. 120070580, Chevy Chase Bank at Ashton.

- 1) This approval is limited to 20 lots for 20 townhouses, and one lot for a mixed-use building with 3 multi-family units and up to 6,800 square feet of commercial and restaurant uses, including a minimum of 12.5 percent MPDUs.
- 2) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120180180 ("PFCP"), approved as part of this Preliminary Plan, unless modified by the Final Forest Conservation Plan:
 - a) Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a Category I Conservation Easement over all areas of forest retention, including stream valley buffer, as identified on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded among the Montgomery County Land Records by deed and the Liber/Folio of the Category I Conservation Easement must be referenced on the record plat.
 - b) Mitigation must be provided for the removal of five (5) trees subject to the variance provision that are not included in the forest clearing calculations. Mitigation must be provided in the form of planting native canopy trees totaling 46 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees planted for variance tree mitigation are in addition to the trees planted to satisfy the landscaping requirements. The mitigation trees must be planted on the Subject Property, in locations shown on the approved 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.
- 3) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 2, 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.

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

- 4) The Planning Board accepts the recommendations of the Maryland State Highway Administration (“MDSHA”) 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 MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) Prior to issuance of access permits for MD 108, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 6) 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 September 28, 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 – Water Resources Section provided that 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 August 30, 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) The Applicant must dedicate and show on the record plat(s) the following dedications:
 - a) Forty (40) feet from the existing right-of-way centerline along the Subject Property frontage for Olney- Sandy Spring Road.
 - b) A total of fifty (50) feet of right-of-way for Porter Road along the portion of the Subject Property where the Applicant is in control of both sides of the road and fifty (50) feet from opposite right-of way-line where the Applicant is only in control of one side of the road.
- 9) Prior to recordation of the plat(s), the Applicant must satisfy MDSHA requirements to ensure the construction of a five-foot wide sidewalk with an 8-foot-wide buffer (minimum) along the Subject Property frontage MD 108 as shown on the Preliminary Plan.
- 10) A public access easement must be shown on the record plat for the sidewalk north of the Common Open Space which connects Porter Road to the adjacent Alloway Building (Parcel 451 on Tax Map JT42).

- 11) The Applicant must label all Private Alleys on the Certified Preliminary Plan and Certified Site Plan.
- 12) The Applicant must provide Private Alleys A-D, including any sidewalks, storm drainage facilities, street trees, street lights, private utility systems, and other necessary improvements as required by either the Preliminary Plan or Site Plan within the delineated areas (collectively, the "Private Alleys"), subject to the following conditions:
 - a) The record plat must show Private Alleys A, B, C and D in a separate parcel(s). The record plat must clearly delineate the Private Alleys and include a metes and bounds description of the boundaries of the Private Alleys.
 - b) Private Alleys B, C and D must be referenced on the plat and subject 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) The record plat must reflect a common use and access easement for Private Alley A.
 - d) The Certified Preliminary Plan and record plat must reflect utility easements as required for utility access on the Private Alleys.
- 13) 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."
- 14) Prior to recordation of any plat, Site Plan No. 820180160 must be certified by Staff.
- 15) Record plat must show all necessary easements.
- 16) Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and open spaces will be determined at site plan.
- 17) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of the Planning Board Resolution.

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

1. *The layout of the subdivision, including size, width, shape, orientation and 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 design of the two blocks (A & B) shown on the Preliminary Plan are appropriate for the development given the size, shape and location of the Subject Property. The Subject Property is divided by Porter Road and surrounded by right-of-way, previously developed property or recorded lots. Block A is west of Porter Road and Block B is on the east. At its longest and widest points, Block A is approximately 590 feet long and 120 feet wide. Block B is a maximum of approximately 350 feet long and 220 feet wide. Both blocks are well below the 1,600-foot maximum length. The block design provides adequate spacing to allow for vehicular and pedestrian circulation. The blocks are appropriately designed for the development as shown on the Preliminary Plan.

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

The size, width, shape and orientation of the lots are appropriate for the location of the subdivision, taking into account the approved binding elements of H-119, the recommendations included in the Master Plan and Overlay Zone. Each lot can adequately accommodate the proposed uses on the lot, including all necessary infrastructure necessary to serve the use.

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

Master Planned Sites

There are no master-planned sites on the Property.

Local Recreation

The Applicant has provided 10% Common Open Space area and additional areas of open space scattered around the Property where recreational facilities could be located. The Floating Zone Plan requires 10% Common Open Space. The Applicant has provided two spaces in the development that provide the

minimum required Common Open Space. The specific details and placement of recreational facilities will be determined at site plan, but the Preliminary Plan does provide adequate space to accommodate recreational uses.

Areas for public roads, utilities and storm drains

The Applicant is providing space for all required public and private roads, other internal circulation elements (sidewalks and alleys), parking and is providing all necessary easements for stormwater management facilities and public utilities.

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

Townhouse development

The lots were reviewed for compliance with the dimensional requirements for the TF-10 zone (Equivalent Euclidean- TLD zone), standards of the Sandy Spring/Ashton Rural Village Overlay zone and as specified in the Zoning Ordinance and stipulated in the binding elements of the approved Floating Zone Plan. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

With regard to the townhouse use and maximum allowable density, the Hearing Examiner has already found (as part of the LMA) that in combination with the aforementioned binding elements, up to 20 townhouses are a permitted use on the TF-10 portion of the Subject Property. Section 5.2.5. of the Zoning Code (Residential Floating Zones: Development Standards) stipulates that minimum lot size, maximum height, and setbacks from the site boundary are established by the Floating Zone Plan (i.e. binding elements), but all other setbacks are established by the Site Plan.

Multi-Use Building

The lot was reviewed for compliance with the dimensional requirements for the development of a multi-use building type under the standard method in the CRT Zone and Overlay Zone. Although the development is standard method, in the Overlay Zone a site plan is required for the construction of a new building and must meet the use standards under Section 59.4.9.15.E. The additional standards of the Overlay Zone are addressed in detail as part of the concurrent site plan.

The proposed lot meets all the dimensional requirements for area, frontage, width, and setbacks in the CRT Zone. The exact building location, setbacks and additional requirements of the zone will be determined at site plan. The Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan.

The Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Preliminary Plan meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations of the Master Plan, and the intended uses.

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

The Preliminary Plan is in substantial conformance to the recommendations of the Master Plan. The Subject Property is within the "Ashton Village Center" as designated in the Master Plan (pg.38). The fundamental objective of the Master Plan was to preserve the rural character of the Sandy Spring/Ashton Area and revitalize the Village Centers.

For the Ashton Village Center, the Master Plan confirmed existing land use recommendations as well as the existing zoning pattern. The Master Plan recommended the creation of the Sandy Spring Rural Village Overlay Zone and provides development guidelines to be used in connection with development of properties within the Sandy Spring and Ashton Village Centers. The residential portion of the Application modestly increases densities while maintaining the scale and pattern of development in the Ashton Village Center, with most of the townhomes located along Porter Road away from MD 108. Building heights are in keeping with nearby homes and enhance the mixed residential and commercial character of the village. The multi-use building is appropriately located along MD 108 and is consistent with Master Plan's development guidelines for land uses, building height and location. The design of the mixed-use building is also consistent with Master Plan guidelines for activated streets and a focus on pedestrian activities. Locating parking beneath the building with a rear entrance meets guidelines for parking scale and placement. As recommended by the Master Plan, the building was specifically designed using some of the design elements and characteristics present in Sandy Spring historic district.

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

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the development by this Preliminary Plan. The Subject Property has frontage on Olney-Sandy Spring Road and access to the lots will be via Porter Road, both public roads. The Application proposes to upgrade the Porter Road and create a network of private streets/alleys to serve the multi-use building and both clusters of townhomes.

Metro Bus Route Z2 serves the Subject Property with a bus stop in front of the property, for eastbound and west bound travel to Olney and Silver Spring. Pedestrian facilities within the area consist of a sidewalk on the south side of Olney-Sandy Spring Road, including a three to four-foot wide sidewalk along the property frontage on the south side of the road, and sidewalks along small sections of property frontage near the intersection of Olney-Sandy Spring Road and New Hampshire Avenue.

Parking

The Application provides more parking than required by zoning for the multi-use building (five additional spaces) and provides the required two, off-street parking spaces for each townhouse lot (two car garages). In addition, the townhouse lots have been designed to be long enough to accommodate up to two additional vehicles in each driveway. The Applicant is also providing more than the required bicycle parking, with four short-term bicycle parking spaces by the retail building (two racks) and four short-term bicycle parking spaces in the Common Open Space (two racks).

Nearby Planned Transportation Projects

The Maryland State Highway Administration has planned a sidewalk and curb and gutter project on the north side of Olney-Sandy Spring Road from Brooke Road (to the west of the Property) to New Hampshire Avenue (to the east of the Property). Based on information from MDSHA, this project is currently on hold.

Master Planned Improvements

Olney-Sandy Spring Road is a Master Planned Arterial Road (A-92) with a minimum 80-foot right-of-way and is envisioned to be a maximum of three lanes configured as follows: two through lanes and, where needed, one auxiliary lane used for turning lanes or acceleration/deceleration lanes. In both the 2005 *Countywide Bikeways Functional Master Plan* and the 2018 *Planning Board Draft Bicycle Master Plan*, Olney-Sandy Spring Road is also designated to have a side path on the north side, opposite the Subject Property. The Preliminary Plan is providing the necessary dedication to provide 40 feet from the centerline of Olney-Sandy Spring Road across the entire Property frontage, an average dedication of approximately 3.5 feet, and is also providing a five-foot wide sidewalk along the full frontage set back from the curb by more than 10 feet.

Road Design

As part of the necessary frontage improvements, the Applicant is constructing Porter Road, which is currently improved as a rough asphalt driveway and unmaintained by the County, to Montgomery County Tertiary Residential Street standards (MC-2001.02). Sidewalks will be constructed on both sides down to the Common Open Space park. The improved Porter Road will terminate in a

temporary turnaround (hammerhead) in accordance with MC-223.01 at the southern end of the Subject Property. A hammerhead is proposed as a temporary termination of the improved road which the Applicant will build and turnover to Montgomery County for maintenance. Beyond the hammerhead (south) the roadway will remain in its current condition and continue to serve three homes. Montgomery County does not maintain that portion of the road. The hammerhead is recommended to allow County maintenance vehicles an opportunity to turn around. The hammerhead also provides an opportunity for the motoring public to turn around should they find the remainder of Porter Road non-navigable.

The Applicant is also improving the Property frontage on MD-108 in concert with constructing Porter Road. The existing lane configuration will remain, preserving the rural character of the road and improving the "main street" character within the village as envisioned by the Master Plan (pg.50). The uncontrolled driveway apron in front of the existing commercial building will be eliminated. New curbing, a 10-foot-wide grass tree panel and a 5-foot wide sidewalk will be installed. The new curb and tree panel will create a clear separation between the road and the pedestrian realm consistent with the cross-section identified in the Master Plan.

Justification for Private Alleys

In addition to upgrading Porter Road, the Applicant is proposing a network of private alleys to serve the multi-use building and the townhomes. To avoid front-loaded townhouses with multiple curb-cuts on Porter road, the townhouses are rear loaded and accessible from the alleys. None of the alleys provide through access. Per section 50.4.3.E.4.b of the Subdivision Code, the Applicant has provided justification for creating private alleys and identified the design elements that do not meet the standard residential alley (MC-200.01) design standard.

As shown on the Approved Fire Access Plan, Alley B and Alley C will provide emergency vehicle access and have 20 feet of pavement, within a 20-foot-wide parcel, and will be constructed to tertiary standards. Alley A will have 16-foot wide right-of-way with 16 feet of paving and will provide access to the rear loaded garages on Lots 1-10. Alley A is not needed to satisfy lot frontage requirements or to provide emergency vehicle access, so reducing the right-of-way width from the standard residential alley width of 20 feet to 16 feet is acceptable. Alley A will be constructed to the structural standards of a residential alley and covered by an access easement. Lots 17-20 do not have frontage on a public road like Lots 1-16, therefore Alleys B, C and D are needed to serve as access and frontage for Lots 17-20.

Justification of Curbs and Gutters

The Applicant has proposed curbs and gutters along Porter Road although the Subject Property is located in a Class IV watershed that is considered environmentally sensitive. Chapter 49, Article 3 (Streets and Roads, Road Design and Construction Code), Section 33, Road Construction Requirements, subsection (1)(1)(A) prohibits the installation of any curb or gutter in any portion of a road that is in an environmentally sensitive watershed area. However, subsection (1)(2) permits the Director of Permitting Services to allow installation of curbs and gutters in a portion of a road located in an environmentally sensitive area *after giving the Planning Board a reasonable opportunity to comment, if:*

- (A) installing curbs and gutters will not significantly degrade water quality in the area;*
- (B) curbs and gutters are necessary for vehicular or pedestrian safety or the proper grading or maintenance of the road, or to reduce the environmental impact of the road on any park, forest, or wetland; and*
- (C) a preliminary subdivision plan or site plan approved by the Planning Board for the land abutting the portion of the road where curbs and gutters may be installed expressly permits the curbs and gutters to be installed, if either plan is required for the land in question.*

Installation of the curb and gutter will capture run-off from the streets and direct any pollutants and sediment into a storm drain system running to downstream stormwater management facilities. The stormwater management facilities, which incorporate Environmental Site Design standards, will treat the run-off and the MCDPS has found the stormwater management concept for the project to be acceptable. Therefore, the design including curbs and gutters will maintain and not significantly degrade water quality in the area.

Curbs and gutters provide vertical separation between pedestrians and vehicles, maximizing public safety for pedestrian and drivers by creating a barrier between cars and pedestrians/trees. Additionally, illegal parking along this road will also be deterred with curbs and gutters saving trees and pedestrians from damage and conflicts, respectively. Finally, curb and gutter is in keeping with the character of the area as established in adjacent development that provided similar conditions with a curb, tree panel, and sidewalk. The Planning Board supports the use of curbs and gutters shown on the Preliminary Plan.

Additional Transportation Analysis

During the Local Map Amendment hearing for the Subject Property, several community members expressed concerns that the proposed development would exacerbate vehicular delay and create unsafe traffic conditions in front of the Subject Property. Based on these concerns the Applicant conducted a gap analysis to determine if there were adequate breaks in adjacent street traffic for cars to enter and leave the Subject Property during peak morning and evening

hours. Based on that analysis, sufficient gaps in traffic exist for safe and efficient site operation, However, the Maryland State Highway Administration recommended improvements to improve site access. MDSHA's recommendation to shorten the cycle lengths at the MD 108 and MD 650 intersection to create more gap opportunities for Porter Road users is directed at MCDOT who controls traffic light signal timing. MDSHA's recommended improvements are a condition of this approval to the extent they are within the Applicant's control.

a. Local Area Transportation Review (LATR)

The Preliminary Plan was reviewed using the 2016-2020 Subdivision Staging Policy and associated 2017 Local Area Transportation Review (LATR) Guidelines. The project would generate 58-person trips during the AM weekday peak period and 147-person trips during the PM weekday peak period based on the *ITE Trip Generation Manual*, 9th Edition and adjusted for the Rural East policy area. (Excluding pass-by trips, the project would generate 58 AM and 112 PM person trips.) Because the project generated 50 or more-person trips, a traffic study was required to satisfy the LATR Guidelines.

The traffic study was completed on June 28, 2018 and studied two local signalized intersections on either side of the project's unsignalized entrance on Porter Road. All study area intersections were located within the Rural East policy area, which has a Critical Lane Volume (CLV) standard of 1350. The traffic study looked at existing conditions, background conditions which include approved but unbuilt projects that may send trips through the study area intersections, and total future traffic which adds the projected impact of the subject Application to the background traffic. None of the critical intersections exceed the policy area congestion standard under the future traffic condition. Since the CLV analysis was within acceptable levels, no infrastructure improvements are required to satisfy the LATR guidelines.

b. School Adequacy Analysis
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 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. The Subject Property is located in the Upcounty Region of the County.

Per Unit Student Generation Rates – Upcounty Region

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

With a net of 20 single family attached units, 3 multifamily low-rise units, and -1 single family detached unit, 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 Detached	-1	0.214	-0.214	0.123	-0.123	0.168	-0.168
SF Attached	20	0.251	5.020	0.116	2.320	0.151	3.020
MF Low-Rise	3	0.204	0.612	0.074	0.222	0.099	0.297
TOTAL	22		5		2		3

This project is estimated to generate 5 new elementary school students, 2 new middle school students, and 3 new high school students.

Cluster Adequacy Test

The project is located in the Sherwood High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Sherwood 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	2,111	2,487	84.9%	2,985	2,116
Middle	1,167	1,458	80.0%	1,750	1,169
High	2,054	2,188	93.9%	2,626	2,057

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 Sherwood ES and William H. Farquhar 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	
Sherwood ES	432	547	79.0%	+115	657	657	437
Farquhar MS	592	800	74.0%	+208	961	980	594

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.

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 Sherwood ES and Farquhar MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

School Adequacy 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 of residential development proposed by this Application.

c. Other Public Facilities and Services

The Subject Property is in sewer category S-1 and water category W-1 which is consistent with the Applicant’s proposal to connect to public water and sewer which are available and adequate to serve the development. New water lines will tie into the existing water line in MD 108 to serve the lots. Because the

topography of the Property, sewer service for Lots 1-4 and the multi-use building will be tied into the existing sewer line in MD 108, and the remainder of the units will connect to a new sewer line that is being extended to an existing manhole southwest of the Subject Property (within the Porter Road right-of-way).

The existing electrical service provided by PEPCO will be upgraded to serve the proposed multi-use building. New electrical service and gas line will be provided for the townhomes via a utilities easement within the private road/alley system.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated August 30, 2018.

Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the 2016-2020 Subdivision Staging Policy.

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

a. Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420170860 for the Property was approved on March 15, 2017. The NRI/FSD identifies the environmental features and forest resources on the Property. The Property contains approximately 1.02 acres of forest, including approximately 0.71 acres of forested stream valley buffer. The forest is all located on the west side of Porter Road. There is one perennial stream that originates at a spring on the Property, on the east side of Porter Road and flows in a southwestern direction under Porter Road via an existing culvert before meandering through the on-site forest and exiting the Property in the southwestern corner of the Property. The associated stream buffer is bifurcated by existing Porter Road and includes an unforested portion on the east side of the road and a forested portion on the west side of Porter Road. There are no wetlands, 100-year floodplain, highly erodible soils, or slopes greater than 25 percent on the Property. There are 56 trees greater than or equal to 24" Diameter at Breast Height (DBH) that were identified on or adjacent to the Subject Property, 23 of which are 30" DBH and greater.

Stream Buffer Encroachments

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, and when determined that there are no reasonable alternatives and the impacts have been minimized as much as possible.

The Application proposes to impact the stream buffer to: 1) provide required dedication for road right-of-way and public utility easement, and construct necessary improvements including 5-foot wide sidewalks along Porter Road, an existing public road, 2) construct storm drain connections from required stormwater management facilities, and 3) construct necessary water and sewer connections. These impacts are highlighted on the attached Stream Valley Buffer Impact Exhibit. In addition to these proposed areas of disturbance, the Applicant has requested to exclude an unforested portion of the stream buffer located on the east side of Porter Road from the Category I conservation easement to allow this area to be utilized as 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 proposed disturbances with the stream buffer cannot be reasonably avoided. Porter Road is an existing public road that provides access to existing homes as well as the proposed development. The stream buffer that will be applied to this Property will be bifurcated by the existing road. The dedication of right-of-way and public utility easement is an unavoidable requirement. The existing road cannot reasonably be relocated outside of the stream buffer and the improvements to the road and the addition of sidewalks along one side are necessary to serve the existing and proposed developments. The storm drain connections are necessary to convey the stormwater from the stormwater management facilities to the existing storm drain system, and the water and sewer construction is necessary to provide service to the development and connect to the existing system located in the stream valley buffer. The portion of the stream buffer to be excluded from the conservation easement to allow for open space is currently an open grassed area that will be maintained in a natural condition with grass and tree and shrub plantings.

2. *Encroachment into the buffer has been minimized.*

Staff and the Applicant worked together to revise the layout and design of the development to avoid and minimize impacts to the stream buffer to the extent practical. At the time of the re-zoning, the Application included additional, permanent impacts to the stream buffer including new roads and homes. At the time of the re-zoning review, Staff expressed concern that the proposed encroachments were not in conformance with the *Environmental Guidelines* as the impacts could be minimized and were potentially avoidable.

These concerns were expressed at the Planning Board hearing and in the transmittal letter to the Hearing Examiner dated May 30, 2017. The memo noted that further evaluation of the proposed impacts to the stream buffer would occur during the review of the preliminary plan and site plan. Subsequently, the layout was redesigned to eliminate these impacts and limit them to those associated with the existing Porter Road, and necessary utility connections. The portion of the buffer to be utilized as Open Space was limited to the non-forested portion of the buffer that has been previously altered. Although this portion of the stream buffer will not be protected in a conservation easement, the Landscape Plan includes the planting of native trees and shrubs, and the requirements of the Site Plan will offer some protection for this area. The resulting layout demonstrates considerable effort to avoid and minimize impacts to the stream buffer, as recommended in the *Environmental Guidelines*.

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 on the Property. The majority of the forested stream buffer will be protected in a Category I conservation easement, with the exception being those areas within the right-of-way dedication for Porter Road, and the storm drain, water and sewer connections. The proposed Open Space area is located in an unforested portion of the stream buffer. Approximately 150 square feet of wetland buffer that is associated with an off-site wetland will be impacted by the proposed sewer connection. The existing sewer manhole is located within the wetland buffer and the impact is unavoidable. The impacted area will be returned to the existing grade after construction is complete.

4. *The proposed use is consistent with the preferred use of the buffer (e.g., pervious areas such as tieouts to existing grades, slope stabilizing BMPs, etc.).* The location of storm drains, water and sewer connections, and road dedication areas and improvements allow for necessary infrastructure for the development. The area of the stream buffer excluded from the conservation easement is an existing open area that will be planted with some tree cover. This area will likely continue to be unimproved but maintained, and as such, will continue to function in the same manner as it does currently.
5. *The plan design provides compensation for the loss of buffer function.* Many of the proposed encroachments in the buffer will not result in loss of buffer function. The utility connections are temporary in the sense that these

areas will be returned to the existing grade upon completion of construction. The improvements associated with Porter Road are related to the existing condition of the road within the buffer and will include required stormwater management where none currently exists, compensating for any loss of functions resulting from the proposed impacts.

Where the Applicant proposes to exclude the buffer from the Category I conservation easement, the current functions provided within the buffer will remain. This area will serve as Open Space and the buffer will be enhanced by planting additional landscape vegetation that is included as part of the Site Plan's Landscape Plan.

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 for the project was submitted with the Preliminary Plan and a Final Forest Conservation Plan was submitted with the Site Plan. The Preliminary Plan and Site Plan reviews occurred concurrently, so the Preliminary and Final Forest Conservation Plans have also been reviewed concurrently. The Preliminary Forest Conservation Plan is consistent with the submitted Final Forest Conservation Plan. Due to the different zones and corresponding land use categories included in the Application, there are two separate forest conservation worksheets and they are located on the Preliminary and Final Forest Conservation Plans. The net tract area for forest conservation is 3.73 acres, which includes the 3.04-acre Property and 0.69 acres of offsite disturbance for required utility connections along Olney-Sandy Spring Road and southwest of the Property.

The FCP includes 1.02 acres of existing forest located on the west side of Porter Road. The Application proposes to retain 0.54 acres and remove 0.48 acres of forest. The retained forest will be protected in a Category I conservation easement. The proposed forest clearing generates a reforestation requirement of 0.25 acres and there is an additional 0.10-acre afforestation requirement for a total of 0.35 acres of forest planting requirement. The Applicant proposes to meet the planting requirement at an M-NCPPC approved forest bank.

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 17 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 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 as the disturbance to the Protected Trees is due to the reasonable development of the Property. Protected Trees are located in the developable area of the Property. The Applicant’s efforts to minimize impacts to the stream buffer while implementing the necessary and required infrastructure has resulted in unavoidable impacts to Protected Trees. The requested removal of and impacts to Protected Trees are due to required road improvements and utility connections that would be necessary under any application for development of the Property, and disturbance within the anticipated developable area of the site. Any development considered for this Property would be faced with the same considerations. Granting a variance to allow land disturbance within the developable portion of the Property is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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 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 proposed design and layout of the 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. Onsite mitigation for the removal of the Protected Trees will ultimately replace the functions currently provided by the Protected Trees to be removed. In addition, the MCDPS has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated September 28, 2018. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

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 September 28, 2018. The Application will meet stormwater management goals using five micro-bioretenment facilities distributed throughout the Subject Property.

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 NOV 30 2018 (which is the date that this Resolution is mailed to all parties of record), and ~~NOV 30 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).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, November 15, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board