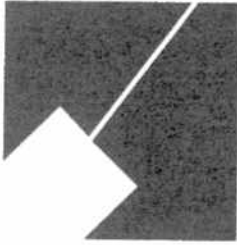


M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

June 21, 2010

**OFFICE OF  
THE GENERAL COUNSEL**

**(301) 495-4646  
FAX (301) 495-2173**

**REQUEST FOR RECONSIDERATION**

**MEMORANDUM**

**TO:** Montgomery County Planning Board  
**FROM:** Christina Sorrento, Associate General Counsel  
301-495-4646  
**RE:** Reconsideration Request for Montrose Park  
Site Plan No. 82002021A

A handwritten signature in black ink, appearing to be 'CS'.

---

Staff is requesting that the Planning Board reconsider the Montrose Park Site Plan No. 82002021A Resolution that was mailed on August 4, 2009.

**I. Background**

On July 9, 2009, the Planning Board approved a limited amendment to the Montrose Parks Site Plan in response to a violation with a 4-0 vote, Commissioners Cryor, Hanson, Presley, and Robinson voting in favor and Commissioner Alfandre being absent. The amendment approved modifications to the Site Plan that ratified as-built conditions that deviated from the original Certified Site Plan. The amendment also approved modifications requested by Staff that included the placement of a Category I Conservation Easement over the onsite stream buffer.

**II. Applicable Rule**

A reconsideration request must "specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause." The Planning Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. In this case, only Commissioner Presley is eligible to move for reconsideration. If there is no motion

for reconsideration, the request for reconsideration is denied. Any motion to reconsider must be supported by a majority of the Board members present who either participated in the previous decision or read the record on which it was based. Since Commissioner Presley was the only Board member present at the hearing, we ask that all Board members watch the July 9, 2009 hearing before the reconsideration request is heard by the Board this Thursday.

### **III. Reconsideration Request**

Condition No. 3a of the Site Plan Amendment requires the Applicant to "Record a Category I Conservation Easement over the stream buffer area shown on the site plan". The land where the Easement is to be recorded is owned by the Homeowner's Association and is no longer owned by the Applicant. An illustration of the Category I Conservation Easement is attached as Attachment One. The area in question is located below the weir and is shaded in orange. The Homeowner's Association will not agree to stop mowing in that area for aesthetic reasons and therefore will not sign off on the Category I Conservation Easement. Although the Category I Conservation Easement was a condition of the original approval, the situation as it currently exists is beyond the control of the Applicant.

Since it is no longer feasible to complete the Site Plan in accordance with the Planning Board's approval, Staff is requesting a reconsideration of the Site Plan for the limited purpose of amending Condition No. 3a. Staff is proposing to keep the Category I Easement in the stream buffer above the weir but to change the requirement for below the weir to a Category II Easement. This would allow the HOA to continue mowing in the area but would also ensure that the trees are retained. The Category I and Category II Conservation Easements would then be recorded on the plat.

### **IV. Recommendation**

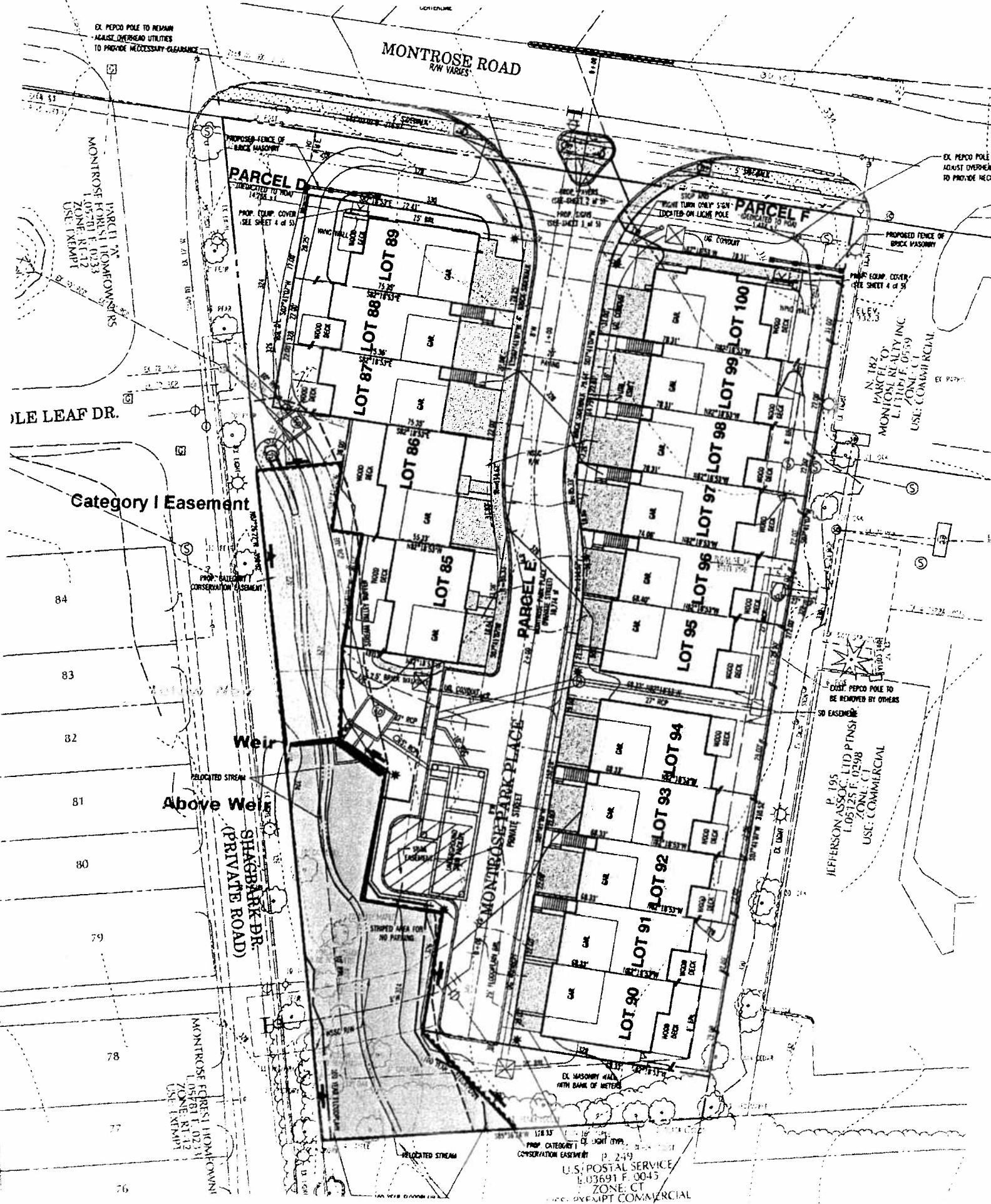
The Legal Department recommends that the Board reconsider Site Plan No. 82002021A for the limited purpose of amending Condition No. 3a. We believe that the Applicant's inability to obtain a Category I Conservation Easement below the weir due to the Homeowner's Association's lack of consent is good cause for reconsideration. If the Board grants the reconsideration request, we ask that the item be put on the consent agenda unless there is opposition from the public.

### **V. Attachments**

Attachment One- Depiction of Conservation Easements

Attachment Two- Site Plan Amendment resolution dated August 4, 2009

Attachment Three- Site Plan resolution dated March 11, 2002



Category I Easement

Weir

Above Weir  
SHAGBARK DR.  
(PRIVATE ROAD)

MONTROSE ROAD  
R/W VARIES

PARCEL D

PARCEL F

LOT 87  
LOT 88  
LOT 89

LOT 99  
LOT 100

LOT 86  
LOT 85

LOT 98  
LOT 97  
LOT 96

LOT 95  
LOT 94

LOT 93  
LOT 92

LOT 91  
LOT 90

EXIST. PEPCO POLE TO BE REMOVED BY OTHERS

JEFFERSON ASSOC. LTD. PARTNERSHIP  
L05125 F, 0798  
ZONE, CT  
USE: COMMERCIAL

U.S. POSTAL SERVICE  
L03691 F, 0045  
ZONE, CT  
EXEMPT COMMERCIAL



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

MCPB No. 09-80  
Site Plan No. 82002021A  
Project Name: Montrose Parks  
Hearing Date: July 9, 2009

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on January 7, 2008, Montrose Park, LLC ("Applicant"), filed a site plan amendment application designated 82002021A, Montrose Parks (the "Amendment") for approval of the following modifications:

➤ Modifications to ratify as-built conditions that deviate from the Certified Site Plan:

- 1) Reverse (mirror) units on recorded Lots 90 and 95 (previously designated in the site plan as Lots 6 and 11) to depict as-built conditions.
- 2) Revise lot numbers to reflect Record Plat designations.
- 3) Update color, style, and pattern of sidewalk pavers.
- 4) Install sidewalk pavers on crushed stone/sand base rather than set on concrete.
- 5) Install pavers on driveways rather than concrete.
- 6) Revise curb and gutter detail to show rolled/mountable curb.
- 7) Delete site furnishings from the plans.
- 8) Revise style of board-on-board fence.
- 9) Update landscape plan to reflect as-built conditions and to delete plants previously depicted on individual lots in private ownership.
- 10) Delete street light pole/fixture in front of Lot 86.

➤ Modifications at the request of Staff:

- 11) Record Category I Conservation Easement boundaries and locations of demarcation signage.
- 12) Provide additional native plantings (understory shrubs and trees) on the western property line to create equivalent canopy coverage as approved by the original site plan.

Approved as to  
Legal Sufficiency:

*Christina Soren* 7/15/09

8787 Georgia Avenue, NCRPC Legal Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- 13) Install concrete pavers on the triangular median island outside the public right-of-way at the intersection of Montrose Road and Montrose Place.
- 14) Stripe parking spaces and loading/turn-around area.
- 15) Add Offsite Stream Improvement Plan as approved by the Department of Permitting Services to the certified site plan set.

➤ Modifications to include additional site plan elements not included in the Certified Site Plan:

- 16) Add ground mounted entrance signs;
- 17) Add equipment covers on Units at recorded Lots 89 and 100 (formerly Lots 1 and 16); and
- 18) Change style of street lights from one to three light fixtures per pole.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staff of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 25, 2009, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on July 9, 2009, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on July 9, 2009, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley, seconded by Commissioner Cryor, with a vote of 4-0, Commissioners Cryor, Hanson, Presley, and Robinson voting in favor and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan No. 120010220 as listed in the Planning Board Resolution dated August 28, 2001 unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DPWT conditions, and DPS stormwater conditions.

2. Site Plan Conformance

The proposed development must comply with the conditions of approval for Site Plan No. 820020210 as listed in the Planning Board Resolution dated March 11, 2002, or as amended by this Amendment. Consistent with condition 3.b.iii of the

original Site Plan Resolution, the Site Plan Enforcement Agreement is still in effect for the enforcement of the off-site improvements in conjunction with a bond posted with M-NCPPC by the Applicant to cover proper installation and maintenance of the referenced improvements, including plantings, for a period of two years from the installation. Any bond posted with M-NCPPC will not need to cover installation and maintenance of improvements specifically covered by bonds posted with other governmental agencies.

### 3. Stream Buffer Enhancement

The Applicant must satisfy all conditions prior to approval of the certified site plan.

- a. Record a Category I Conservation Easement over the stream buffer area shown on the site plan.
- b. Show locations of demarcation signage on the certified site plan.
- c. Amend standard language of the Category I Conservation Easement to allow for proper maintenance of storm water management/drainage structures within the Easement.
- d. Show removal of dead trees within the onsite stream restoration area, with stumps left intact.
- e. Provide a minimum of 6 native replacement trees to fill voids in the canopy. Two of these trees must be *Taxodium distichum* (Bald cypress).
- f. Provide a minimum of 27 native understory plantings in the onsite stream restoration area.
- g. Obtain approval from the Montrose Parks HOA to record the Easement.

### 4. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated April 30, 2001, unless amended and approved by the Montgomery County Department of Permitting Services.

### 5. Site Design

- a. Stripe the parking spaces and loading/turn-around area.
- b. Install concrete pavers on the triangular median island at the intersection of Montrose Road and Montrose Place unless prohibited by the Department of Permitting Services and/or Department of Transportation.
- c. Modify wing walls on Lots 89 and 100 (formerly Lots 1 and 16) as depicted on the "entrance detail."

### 6. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Construction of all modifications approved by this Amendment must be started within 30 calendar days of the date that this Resolution is mailed to all parties of record.
- b. A development program must be provided on the certified site plan indicating a completion date.

7. Certified Site Plan

Prior to 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, development program, inspection schedule, and site plan Resolution on the approval or cover sheet.
  - b. Add a note to the site plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
  - c. Ensure consistency off all details and layout between site plan and landscape plan.
  - d. Revise plant list to reflect correct quantities of plantings on the landscape plan.
8. Applicant will pay the sum of \$16,000 to the Montrose Parks HOA within 30 days of the mailing of the limited site plan amendment Resolution.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that all site development elements as shown on Montrose Parks drawings stamped by the M-NCPPC on June 11, 2009, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

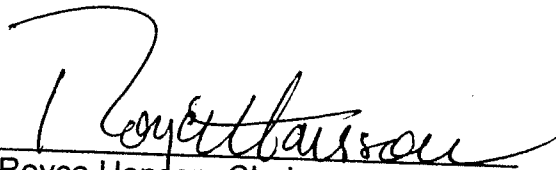
BE IT FURTHER RESOLVED, that the date of this written Resolution is **AUG 4 2009** (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written 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 Alfandre, seconded by Commissioner Cryor, with Commissioners Hanson, Alfandre, and Cryor voting in favor of the motion, and with Commissioner Wells-Harley abstaining and Commissioner Presley absent, at its regular meeting held on Thursday, July 30, 2009, in Silver Spring, Maryland.

  
Royce Hanson, Chairman  
Montgomery County Planning Board





**MONTGOMERY COUNTY PLANNING BOARD**  
**REVISED OPINION**

**DATE MAILED:**           **March 11, 2002**  
**SITE PLAN REVIEW:**   **#8-02021**  
**PROJECT:**               **Montrose Park**

---

*Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 4-1; Commissioners Holmes, Bryant, Robinson and Perdue voted for. Wellington voting against.*

---

The date of this revised written opinion is March 11, 2002. Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before April 10, 2002. If no administrative appeal is timely filed, this site plan shall remain valid for as long as Preliminary Plan #1-01022 is valid, as provided in Section 59-D-3.8. Once the property is recorded, this site plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On February 7, 2001, Site Plan Review #8-02021, was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required;
2. The Site Plan meets all of the requirements of the zone in which it is located;

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development;
5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The Montgomery County Planning Board APPROVES Site Plan Review #8-02021 which consists of 16 single family homes in the R-60 TDR Zone.

1. Conditions of MCDPS stormwater management concept approval dated April 30, 2001.
2. Conditions of Transportation Planning Division memo dated July 26, 2001.
3. Conditions of Environmental Planning Division communication dated February 1, 2002, including:
  - a. Applicant to implement architectural and physical barriers designed to protect decks and ground level areas from Montrose Road noise. Details shall be provided at signature set.
  - b. Applicant shall provide compensation for reduced stream buffer on site through construction of on- and off-site improvements in accordance with a final detailed stream restoration plan at signature set, to include the following:
    - i. Onsite Improvements to include stream restoration, with tree save and native tree replanting per approved plan. Restored and replanted area to be placed in Category I Easement that recognizes MC DPS storm water easement in some areas.
    - ii. Offsite riparian improvements/stream stabilization substantially in accord with signed concept agreement letter dated December 21, 2001. The offsite concept includes improvements to riparian habitat just below the subject property including stream armoring, removal of invasive species, and planting of new trees and shrubs that enhance existing native vegetation/trees.  
[Note: Item 4.b.ii involves a private agreement not subject to direct planning board enforcement. If the Montrose Forest HOA rescinds their concept approval despite continued due diligence by the applicant, applicant shall provide a replacement compensation concept for staff review and approval.]
    - iii. Enforcement of these conditions shall be via the SPEA in conjunction with a bond to cover proper installation and maintenance of referenced improvements for a period of two years.

4. Prior to signature set approval the following revisions shall be made and/or information provided:
  - a. Site Plan
    - i. Site Plan Signature Set shall show all easement lines, LODs, PUEs, ROWs, setbacks, slopes of sidewalks, and all grading;
    - ii. Provide a fence of masonry material along the east side property line running north-south; no fences shall be constructed on lot sides between units to permit maintenance and utility access;
    - iii. Provide documentation from appropriate agencies on utility feed access requirements to all lots on the site; allow for rear utility access to units by providing 8-foot clear path across all lot rears with no obstructions or fences; show utility lines and feeds on site plan;
    - iv. Revise street line to reduce the curve shift and provide for additional streetscaping;
    - v. Provide additional visitor parking to achieve a total of 6 visitor surface spaces;
    - vi. Site Plan Signature Set shall include wall heights and details and materials of decks, yard fences, railings, decks, return walls, and garage doors.
  - b. Landscape Plan
    - i. Provide street trees along internal street; trees shall be a standard species such as Zelkova, London Plane, etc; provide trees at spacing of 44 feet (every other unit), and extending the entire length of the drive;
    - ii. Replace the two Yoshino Cherry trees on each side of the entrance drive with street tree species;
    - iii. Provide landscaping, such as ornamental trees and hedges at the perimeter of the surface parking area;
    - iv. Show location of picnic table and benches.
5. Standard Conditions of Approval dated October 10, 1995:
  - A. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
    - a. Development Program to include a phasing schedule as follows:
      - i. Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
      - ii. Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
      - iii. Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.

- iv. Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
  - v. Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
  - vi. Coordination of each section of the development and roads;
  - vii. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
- B. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
- a. Environmental buffers at least 150 feet wide;
  - b. Limits of disturbance;
  - c. Methods and location of tree protection;
  - d. Forest Conservation areas;
  - e. Conditions of DPS Stormwater Management Concept approval letter;
  - f. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
  - g. Conservation easement boundary;
- C. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
- D. No clearing or grading prior to M-NCPPC approval of signature set of plans.