

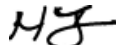


MCPB

Consent Item No. 1C

Date: 4/17/14

Shady Grove Station, Preliminary Plan No. 12012008A

 N'kosi Yearwood, Senior Planner, Area 2 Division, Nkosi.Yearwood@montgomeryplanning.org, 301-495-1332

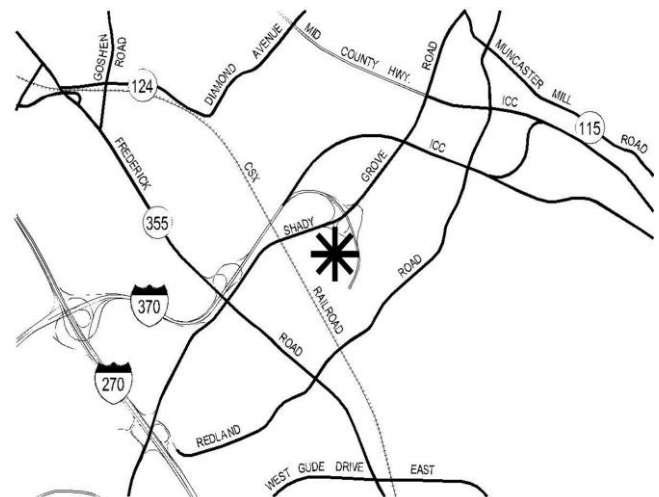
 Khalid Afzal, Supervisor, Area 2 Division, Khalid.Afzal@montgomeryplanning.org, 301-495-4650

 Glenn Kreger, Chief, Area 2 Division, Glenn.Kreger@montgomeryplanning.org, 301-495-4653

Completed: 4/4/14

Description

- Request to modify the approved Preliminary Plan to require the execution of the Traffic Mitigation Agreement prior to the issuance of a building permit and to allow modifications to Roads I and P;
- Located south of the intersection of Shady Grove Road and Crabbs Branch Way between the CSX rail tracks and the Metro Station Access Road;
- TOMX-2/TDR Zone; approximately 90.34 acres; *Shady Grove Sector Plan*.
- Applicant: EYA/CSP Associates and Montgomery County
- Filing Date: March 6, 2014



Summary

- Staff recommends approval of the Preliminary Plan Amendment with conditions.
- The Planning Board previously approved Preliminary Plan No. 120120080, Shady Grove Station, by Resolution No. 12-89 and Site Plan No. 820130220, Shady Grove Station-Westside, by Resolution No. 13-190.
- Staff has received no correspondence from notified parties.

RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of Preliminary Plan Amendment No. 12012008A, Shady Grove Station. All site development elements submitted to M-NCPPC on March 6, 2014 are required, except as modified by the following conditions:

Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan No. 120120080 as listed in the Montgomery County Planning Board Resolution No. 12-89, except for Conditions No. 4 and 7 (b) of the Resolution to be amended as follows:

Condition No. 4

The Applicant must satisfy the Shady Grove Sector Plan's traffic mitigation requirements by entering into a Traffic Mitigation Agreement with the Planning Board and MCDOT. In the Agreement, the Applicant must participate in the Greater Shady Grove Traffic Management Organization (TMO) to assist in achieving the non-auto-driver mode share goals of the Sector Plan. As a new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area, the non-auto-driver mode share goals are a reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips. The Agreement must be executed prior to approval of the first ~~certified site plan~~ building permit for a residential building.

Condition No. 7 (b)

Road P and Road I in the Shady Grove Station West area may be private streets subject to the following requirements:

- b. The design of the roads shall correspond to the Montgomery County Road Code standard (2005.02 modified) for a similar public road, as modified in the cross-sections contained in the preliminary plan, or as shown in the certified site plan.

SITE DESCRIPTION AND CONTEXT

Shady Grove Station, also called the Montgomery County Service Park redevelopment, is located south of Shady Grove Road, north of Redland Road, east of the CSX rail tracks, and west of the Metro Access Road. Crabbs Branch Way runs north-south through the area creating two segments. The Shady Grove Sector Plan refers to the western segment of the property as Metro North-CSP and the eastern segment as Jeremiah Park. Shady Grove Station is in the Transit Oriented Mixed Use/Transferable Development Rights (TOMX-2/TDR zone).

The Grove Shopping Center is located in the northeast quadrant of Shady Grove Road and Crabbs Branch Way in the RMX-2C/TDR Zone, while the David F. Bone Equipment Maintenance and Transit Operations Center (EMTOC) is located west of the Grove in the I-3 Zone.



Vicinity Map

The Property is generally flat. The southern portion nearest to the Metro Station is generally lower and the northern portion is slightly higher. Acres of surface parking spaces for Montgomery County Public Schools Bus Depot, Parks Department maintenance equipment, and low-level industrial buildings comprise the eastern portion of the Property. Salt domes, surface parking areas for trucks, and low-level industrial buildings are located on the western portion of the property, including the Department of Liquor Warehouse, Montgomery County Public Schools Food Service Center, and the Crabbs Branch Day Laborer Center is on the western segment of the site.

PROJECT DESCRIPTION

Previous Approvals

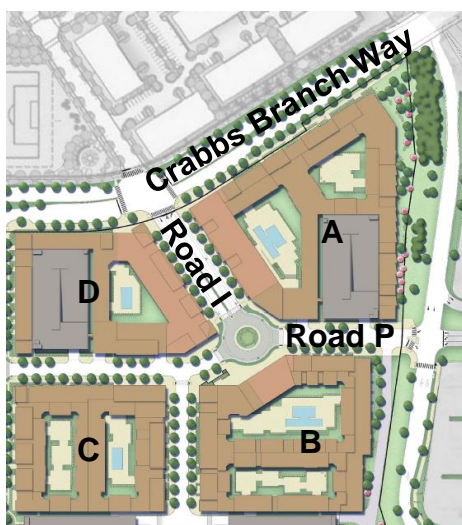
Previous Shady Grove Station approvals are:

- The Planning Board approved Preliminary Plan No. 120120080, Shady Grove Station, on September 11, 2012 for a maximum of 752 townhouse units on up to 752 lots; a maximum of 1,458 multifamily units on up to 95 lots (includes 84 lots for 2 over 2 units and 11 lots for multifamily buildings); 41,828 square feet of retail space on up to 3 lots shared with multifamily units; and a maximum of 131,422 square feet of office development on 1 lot.
- The Planning Board approved Site Plan No. 820130220, Shady Grove Station-Westside, on January 23, 2014 for up to 1,521 residential dwelling units, 41,828 square feet of retail, and space for a public library on approximately 41.8 gross acres.

Proposal and Background

Condition No. 4 of the approved Preliminary Plan No. 120120080 required the Applicant to enter into a Traffic Mitigation Agreement (TMAg) with the Montgomery County Department of Transportation (MCDOT) and the Planning Board prior to the approval of the first Certified Site Plan. The Applicant indicates that negotiations with MCDOT have delayed implementation of the TMAg; therefore, the Applicant is requesting additional time. The Certified Site Plan for Shady Grove Station-Westside is under review. Moving the TMAg execution prior to the first building permit for a residential building will provide the Applicant and MCDOT additional time to complete the TMAg. Staff recommends approval of this modification.

The second amendment pertains to Condition No. 7(b) for Roads I and P. These are private streets that are subject to several conditions, including the County's road design standard.

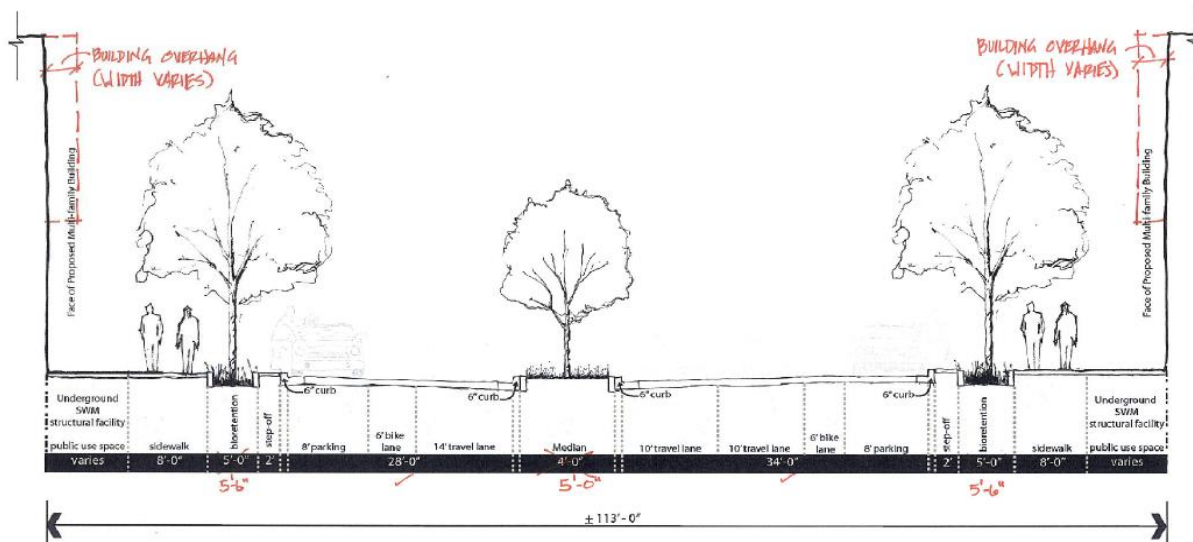


Roads I and P with multifamily Buildings A-D

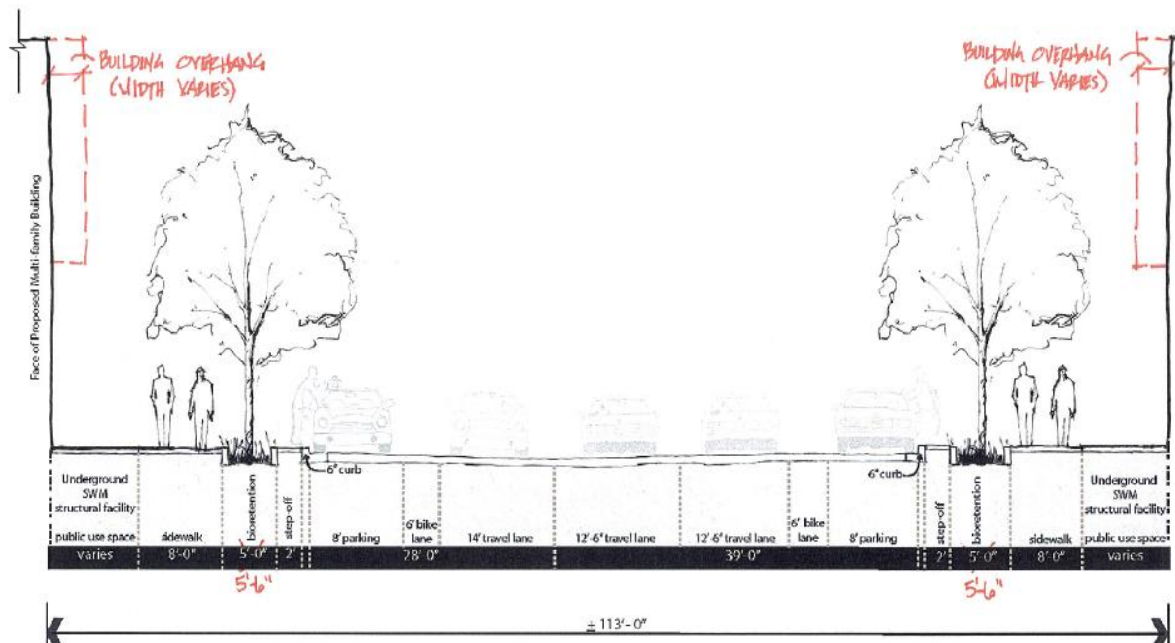
The Shady Grove Station-Westside Site Plan retained the rights-of-way for both roads but made some modifications to both of them. The approved Site Plan made the following changes to Roads I and P:

- Road I (Section I-I): The median has increased by one foot and bio-retention facilities have increased by six inches in width.
- Road I (Section I2-I2): Bio-retention facilities have increased by six inches in width.
- Road P (Section K-K): Bio-retention areas have been replaced with typical planting beds around street trees due to the steep grade. The hard surface area behind the sidewalk for this section has been modified with a new landscape area along the parking garage frontage and in front of multifamily Building B.

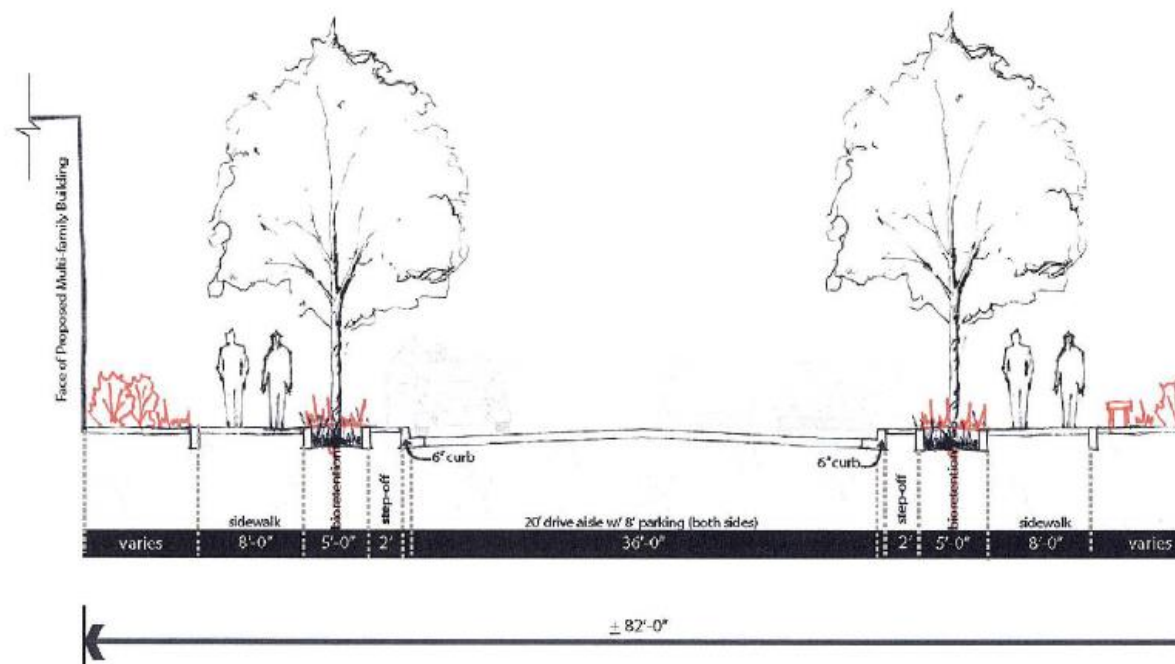
The proposed overhangs of multifamily Buildings A and B, which were approved in the Site Plan, may occur over the public use space and/or sidewalks. The modified roadway cross-sections for Roads I and P are illustrated below:



Modified cross-section for Road I (Section I-I)



Modified cross-section for Road I (Section I2-I2)



Modified cross-section for Road P (Section K-K)

ANALYSIS AND FINDINGS

Master Plan

The proposed Preliminary Plan Amendment maintains conformance with the Shady Grove Sector Plan (2006) recommendations for the subject property as analyzed in the original Preliminary Plan No. 120120080 on September 11, 2012.

Transportation and Circulation

The proposed amendment does not affect vehicular, pedestrian or bicyclist circulation.

Environment

The proposed amendment maintains compliance with Chapter 22A regarding forest conservation.

Development Standards

The proposed amendment does not alter the development standards approved with the original Preliminary Plan No. 120120080.

COMMUNITY OUTREACH

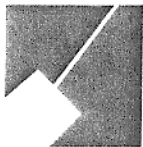
The Applicant has met all the proper signage, noticing, and submission meeting requirements. Staff has received no correspondence on this Amendment.

CONCLUSION

The proposed Preliminary Plan Amendment does not alter the overall design of the development in relation to the original approval, and the proposed project remains compatible with existing and proposed development adjacent to the site. All previous approvals remain in full force and effect, as modified by this Amendment.

APPENDIX

A. Preliminary Plan Resolution MCPB No. 12-89



APPENDIX A

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

MCPB No. 12-89
Preliminary Plan No. 120120080
Shady Grove Station
Date of Hearing: September 6, 2012

SEP 11 2012

RESOLUTION

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

WHEREAS, on November 15, 2011, EYA/CSP Associates and Montgomery County, filed an application for approval of a preliminary plan of subdivision of property to create 752 townhouse lots, 1,458 multi-family residential units, 41,828 square feet of retail and 131,422 square feet of office development on 90.34 acres in the TOMX-2/TDR zone (the Property), located along Crabbs Branch Way, south of Shady Grove Road in the 2006 Shady Grove Sector Plan (Sector Plan or Plan) area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 1200120080, Shady Grove Station (Preliminary Plan or Application); and

WHEREAS, Planning Board staff (Staff) issued a memorandum to the Planning Board, July 13, 2012 and an addendum on August 24, 2012, setting forth its analysis and recommendation for approval, of the Application subject to certain conditions (Staff Report); and

WHEREAS, on September 6, 2012 the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 6, 2012, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Presley, seconded by Commissioner Dreyfuss, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120120080, subject to the following conditions:


Approved for legal sufficiency
M-NCPPC Office of General Counsel

1. This Preliminary Plan is limited to a maximum of 752 townhouse units on up to 752 lots, a maximum of 1,458 multi-family units on up to 95 lots (includes 84 lots for 2 over 2 units and 11 lots for multi-family buildings), 41,828 square feet of retail space on up to 3 lots shared with multi-family units, and a maximum of 131,422 square feet of office development on 1 lot. Additional lots are permitted for common areas, clubhouses, park and school sites, and other County facilities. Ten percent of the total number of residential units excluding MPDUs or resulting MPDU bonus density units must be Workforce Housing units, and 15% of the total number of residential units excluding workforce units must be Moderately Priced Dwelling Units (MPDUs).
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its letter dated June 13, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letters dated June 13, 2012 and July 20, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval, except that any performance guarantees necessary to ensure that the trip reduction goals under Condition #4 are maintained will be determined by subsequent site plans. The Applicant must comply with each of the recommendations set forth in both letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Applicant must satisfy the Shady Grove Sector Plan's traffic mitigation requirements by entering into a Traffic Mitigation Agreement with the Planning Board and MCDOT. In the Agreement, the Applicant must participate in the Greater Shady Grove Traffic Management Organization (TMO) to assist in achieving the non-auto-driver mode share goals of the Sector Plan. As a new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area, the non-auto-driver mode share goals are a reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips with no deduction of existing trips. The Agreement must be executed prior to approval of the first certified site plan.

5. The Applicant must satisfy the Policy Area Mobility Review (PAMR) test by contributing to the Montgomery County Department of Transportation (MCDOT) \$292,500 (\$11,700 times 25 new peak-hour trips) for transportation infrastructure improvements within the greater Derwood/Shady Grove Policy Area. The PAMR payment must be made prior to issuance of any building permit.
6. The Applicant must dedicate and the record plat must reflect dedication of the following roadways as shown on the Preliminary Plan:
 - a. Crabbs Branch Way to the ultimate 120-foot right-of-way.
 - b. Shady Grove Road to the ultimate 150-foot right-of-way.
 - c. Road DD and Road JJ in the Shady Grove Station East area, that provide access to the elementary school site and Jeremiah Park, must be constructed to the Road Code Commercial Business Street standards, (2005.02 modified) with 70-foot rights-of-way.
7. Road P and Road I in the Shady Grove Station West area may be private streets subject to the following requirements:
 - a. Public easements must be granted for the roadways and must be reviewed and approved by MCDOT and M-NCPPC.
 - b. The design of the roads shall correspond to Montgomery County Road Code standard (2005.02 modified) for a similar public road, as modified in the cross-sections contained in the preliminary plan.
 - c. Installation of any public utilities must be permitted within such easement.
 - d. The roads may not be closed for any reason unless approved by MCDOT.
 - e. The public access easement must be volumetric to accommodate uses above or below the designated easement area.
 - f. Montgomery County may require the Applicant to install appropriate traffic control devices within the public easement and the easement must grant the right to the County to construct and install such devices.
 - g. Maintenance and Liability Agreements will be required for each Easement Area. These agreements must identify the Applicant's responsibility to maintain all of the improvements within the Easement Area in good fashion and in accordance with applicable laws and regulations.
 - h. Montgomery County will inspect these streets and ensure that each has been constructed in accordance with the corresponding Road Code standard for a similar public road as modified by the cross-sections contained in the preliminary plan.
 - i. The Applicant is obligated to remove snow and provide repairs to keep the roads in working order and open, and if, for any reason, the Applicant

does not, the County must have the right, but is not obliged, to remove snow and/or provide repairs.

8. Prior to the submission of a Site Plan for any development in the Shady Grove Station East area, the Applicant must record a plat of reservation for the Metro Access Road Partial Interchange. The land area indicated on the Preliminary Plan (23,973 square feet) may be enlarged after MCDOT conducts preliminary engineering for the partial interchange. This plat of reservation will be valid for a minimum of three years.
9. The Planning Board has accepted the recommendations of the Montgomery County Public Libraries (MCPL) in its letter dated June 1, 2012 and hereby incorporates them as conditions of the Preliminary Plan approval. These conditions may be amended by MCPL, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
10. The Planning Board has accepted the recommendations of Montgomery County Fire and Rescue (MCF&R) Services in its letter dated May 23, 2012 and hereby incorporates them as conditions of the Preliminary Plan approval. These conditions may be amended by MCF&R, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Applicant must dedicate to M-NCPPC the approximately 4.1 acre portion identified as "Block AA" in the Shady Grove Station East area on the Preliminary Plan for use as a local public park. The land must be dedicated to M-NCPPC through notation on the plat and by conveyance at the time of record plat in the form of a deed approved by the Office of General Counsel. At the time of conveyance, the property must be free of any trash and unnatural debris. Location and design of boundary markers and signs must be approved by M-NCPPC.
12. Regarding the Montgomery County Public Schools (MCPS) Site identified as "Block BB" in the Shady Grove Station East area on the Preliminary Plan for use as an elementary school site, the Applicant must:
 - a. Move the location of the school site to be co-located with the M-NCPPC park dedication required under condition 11.
 - b. Design the combined school and park site to be a minimum of 8.1 usable acres without any bisecting streets.
 - c. Ensure that the school and park site are served by frontage on a publicly dedicated right-of-way.
 - d. Amend the preliminary plan and plat the dedication of the school and park site in accordance with the above conditions before any site plan subject to this preliminary plan approval is filed for the Shady Grove Station East area or before January 1, 2017, whichever comes first.

13. Before the approval of the first Site Plan for Shady Grove Station East, construction of the trail system around the regional stormwater management pond at Crabbs Branch Way and Redland Road must commence. Trail design details must be coordinated with the Parks Department.
14. The Applicant must reconstruct the entire section of Crabbs Branch Way from Shady Grove Road to Shady Grove Metro Access Road to include on-street parking, shared use paths, and a landscaped median.
15. The Applicant must provide streetscape, landscaping and pedestrian improvements along Shady Grove Road, between the CSX tracks and Metro Access Road, during Site Plan review for Shady Grove Station West.
16. The Applicant must install a traffic signal at each intersection of Crabbs Branch Way and the proposed internal roads "E" and "BB", if MCDOT determines the signals are warranted.
17. The Applicant must coordinate with the Washington Metropolitan Area Transit Authority (WMATA) to provide pedestrian improvements between Road "P" and the Shady Grove Metro Station during the first Site Plan review for Shady Grove Station West.
18. The Applicant must submit a Final Forest Conservation Plan for the area covered by this Preliminary Plan, to be approved with the first Site Plan submitted.
19. The Applicant must re-examine impacts to specimen trees number 32, 39, and 54 during Site Plan review to see if these trees can be saved through site design and construction techniques that reduce impacts to the critical root zones.
20. Fifty shade trees of at least 3" caliper must be included in the Site Plan as mitigation for the removal of 18 specimen trees under the variance. If it is found that trees 32, 39, and/or 54 can be saved, the number of shade trees required may be reduced accordingly. The formula for determining mitigation is 1" of diameter replaced for every 4" of diameter removed, with replacement trees being 3" caliper minimum. These trees do not count toward afforestation requirements.
21. On-site and off-site planting requirements to fulfill the 19.94 acres of forest conservation mitigation will be determined by the Final Forest Conservation Plan.
22. The Applicant must submit a Phase II Noise Analysis prior to Site Plan approval and incorporate noise mitigation measures into the Site Plan.

23. The Applicant must obtain approval of a detailed floodplain study from the Montgomery County Department of Environmental Protection prior to Site Plan approval as required by the Stormwater Management Concept approved by MCDPS.
24. Final approval of the number and location of dwelling units, site circulation, parking, sidewalks, signs, shared use paths, open space and public use space, and sitting areas will be determined at Site Plan.
25. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for up to 12 years (144 months) from the date of mailing of the Planning Board Resolution, according to the phases outlined below. Because the validity period is longer than the typical seven years, a phasing schedule for the APF and preliminary plan validity period, in accordance with Sections 50-20(c)(3)(B), 50-34(g), and 50-35(h)(2)(B) of the Subdivision Regulations, is required. Plats must be recorded and building permits issued as follows:
 - Phase I – 375 residential units, including MPDUs and workforce housing units, within 60 months from the 30th day after the Resolution is mailed;
 - Phase II – 125 residential units, including MPDUs and workforce housing units, within 36 months of the expiration of the Phase I validity period;
 - Phase III – 250 residential units, including MPDUs and workforce housing units, 41,828 square feet of retail space, and the library within 36 months of the expiration of the Phase II validity period; and
 - Phase IV – 1,460 residential units, including MPDUs and workforce housing units, and 133,250 square feet of commercial office space within 12 months of the expiration of the Phase III validity period.
26. If a Development District is proposed by Montgomery County, the Applicant must participate in the District.
27. With the exception of demolition of the existing building and site improvements on the property, in accordance with the County's Smart Growth Initiative, no clearing, grading, or recording of plats prior to the approval of the certified site plan.
28. TDRs must be secured before each plat is recorded for multi-family development. Record plat must reflect serialization and liber/folio reference for all TDRs utilized by the development. A TDR will be purchased for every three multi-family residential units.
29. The final number of Workforce Housing units, MPDUs and TDRs will be determined during Site Plan review.

30. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
31. The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
32. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels and/or easements.
33. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.
34. 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 review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
35. Prior to the issuance of any residential building permit covered by this Preliminary Plan, the Applicant must make a School Facilities Payment at the elementary school level to the Montgomery County Department of Permitting Services. The Applicant is proposing townhouses and mid/low-rise multi-family dwellings with residential parking as defined by the Annual School test effective July 1, 2011 for the Gaithersburg Cluster. This amounts to \$868.78 per residential townhouse, \$456.80 per multi-family garden apartment, and \$34.42 per high/low rise residential apartment at the elementary school level. If the type of residential units changes the applicable school facilities payment, per the Annual School Test effective July 1, 2011, will apply.

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 Preliminary Plan substantially conforms to the Master Plan.*

The Property is within the Metro North-CSP and Jeremiah Park neighborhoods of the Sector Plan, although the Preliminary Plan refers to Metro North-CSP as Shady Grove Station West and Jeremiah Park as Shady Grove Station East. A Sectional Map Amendment following the Sector Plan rezoned the Property to the Transit-Oriented Mixed Use/Transferable Development Rights (TOMX-2/TDR).

The Sector Plan provides specific recommendations for both areas of the Property. Shady Grove Station West is within the Metro Neighborhoods, while Shady Grove Station East is within the Plan's Transitional Area and is identified as Jeremiah Park. The Metro Neighborhoods are envisioned "as an urban village, a place that provides vitality, convenience, and a human scale of development. It should become a residential mixed-use area with some office and community-serving retail uses, and recreational areas providing a focus for community life and services. Functionally integrated with the Metro station, the proposed street pattern will create an interconnected network of streets and sidewalks that ensure good vehicular and pedestrian access to Metro."

The Sector Plan recommends that development in the Transitional Area should be "less dense than the Metro Neighborhoods with open spaces, residential uses, and public facilities to serve the planning area. The Transition Area's transitional uses are an opportunity to achieve compatibility and provide needed public facilities for the Derwood Communities." The Preliminary Plan implements the Sector Plan recommendations with office and retail uses, residential development, a local library and interconnected network of streets on Shady Grove Station West, while public facilities, including the local park and dedicated school site and residential development are on Shady Grove East. The Preliminary Plan provides a library in an alternative location from the Plan's recommendations, on the ground floor of a multi-family building instead of as a free-standing community building in a "highly prominent location." The Planning Board accepts the Department of Public Libraries' recommendation to accept the library as proposed because it is in a suitable location within the dense multi-family residential and retail area. Further, Board finds that the proposed location creates a focal point that terminates the retail area.

Street Network

The public and private streets shown on the Preliminary Plan are consistent with the Sector Plan recommendations. The Sector Plan recommends a new grid system of streets forming short walkable blocks, including Streets "J", "I", and "F" as master plan streets with a minimum 70 feet right-of-way. Streets "I and J" -identified as Roads "DD and JJ" on the preliminary plan- are on Shady Grove Station East and a portion of Streets "I and F" are on Shady Grove Station West (Road P and Road I).

The Sector Plan recommends that "at the time of preliminary plan review, specific street locations shall be determined. Recommended rights-of-way are needed to ensure adequate lanes, bus access, emergency vehicle access, pedestrian sidewalks and street parking." It further recommends that "those streets that are listed in the Street and Highway Classification table as Streets 'F' (north of Street 'H'), 'I', and 'J' in the County Service Park are illustrative of the type of right-of-way needed to improve access to Metro and local circulation. Additional streets in the County Service Park that are illustrated but not listed in the table are also of the type desired." The Preliminary Plan road alignments are analogous to the Sector Plan road network.

The Preliminary Plan implements the Sector Plan recommendation for public streets with Roads "DD and JJ" on Shady Grove Station East as public streets. These streets provide access to the local park and school site, and will be designed to the County's Road Code Business Street District Standard, 2005.02. The Preliminary Plan shows the correct dedication for these streets. Remaining streets in Shady Grove Station East will be private streets.

Roads "P" and "I," which serve the library and the multi-family residential and retail area, are private streets. The Planning Board accepts these private streets since several conditions of approval and requirements are added to ensure public access, design standards, and a maintenance liability agreement with Montgomery County Department of Transportation (MCDOT). These private streets allow greater flexibility to incorporate new Environmental Site Design (ESD) stormwater management techniques within the right-of-way. As a condition of approval, all streets throughout the development will have public access easements.

Section 50-29(a) (2) of the Subdivision Regulations states that, "except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstance, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands. In multi-family and town house development, not subdivided into individually recorded lots, the board may approve more than two (2) lots or buildings on private roads or drives, provided there is adequate access from such roads to a public street, as above."

The Planning Board finds that the private roads shown on the Preliminary Plan achieve the status of a public road because the following criteria are achieved:

- The roads are fully accessible to the public;
- They have minimum pavement widths and be accessible to fire and emergency vehicles;

- They are designed with safe, adequate, and efficient circulation, parking, and sidewalks; and
- They provide frontage for all buildings.

The Planning Board further finds that the street network, with the specified conditions of approval, will provide unrestricted public access, is supported by other County agencies, and will implement the Sector Plan's recommendations.

Partial Interchange

A partial interchange is recommended in the Sector Plan at the southern portion of the County Service Park (CSP), east of Crabbs Branch Way. A preliminary concept for the interchange has been developed. However, the specific amount of land to reserve for the partial interchange is unknown at this time since detailed engineering has not been completed. No development is proposed in the near-term for this area, and the partial interchange requires significant engineering design. The Planning Board finds that the reservation of land should be determined prior to submission of a site plan for any development on SGS East. The funding for the partial interchange is required to be appropriated in the CIP before stage 2 of the Sector Plan may begin.

Crabbs Branch Way

Crabbs Branch Way, between Redland Road and Shady Grove Road, is classified as a commercial business street with a minimum right-of-way at 100 feet. Creating a 'main street' with a landscape median and a shared use path on Crabbs Branch Way is a recommendation in the Sector Plan. The Preliminary Plan shows a right-of-way at 120 feet, which is the existing street right-of-way, to accommodate on-street parking, a landscape median, and a shared use path on the east side of the street. The Planning Board accepts the existing right-of-way since it achieves the Sector Plan's recommendation for a 'main street' with a landscape median, shared use path, and on-street parking.

Shady Grove Road

Shady Grove Road, between the western plan boundary and I-370, is classified as a major highway with a minimum right-of-way at 150 feet. Upgrading Shady Grove Road with sidewalks, lighting, landscaping and street trees are Sector Plan recommendations. The Preliminary Plan shows a right-of-way at 150 feet with 75 feet dedication from the existing centerline of Shady Grove Road. This Preliminary Plan will provide improvements between the CSX tracks and the Metro Access Road.

Bikeway Network

The Preliminary Plan will begin to implement the bikeway recommendation for Crabbs Branch Way. The Sector Plan recommends a Class I bikeway (SP-53) along the east side on Crabbs Branch Way, from Amity Drive to Redland Road. The Preliminary Plan

will implement the shared use path on the east side of Crabbs Branch Way along the Property.

At Shady Grove Road and Crabbs Branch Way, the Sector Plan recommends an underpass under Shady Grove Road to connect both sides of the street. The Preliminary Plan will not implement this recommendation, but it will provide at grade improvements at the intersection. The Planning Board supports at grade improvements since at-grade connections are more direct and the Grove Shopping Center, which is northeast of Shady Grove Road, has not submitted any redevelopment plans and it is unknown if any potential redevelopment will occur. The Sector Plan acknowledges that both Shady Grove Station East (Jeremiah Park) and the Grove Shopping Center must redevelop in order to implement the shared use path under Shady Grove Road.

Environmental

Enhancing the natural environment with green open spaces, establishing a forest buffer along the Metro Access Road, providing noise mitigation, and using environmental site design techniques are some of the recommendations in the Sector Plan. The Preliminary Plan will utilize environmental site design techniques, such as bioswales and permeable surfaces; noise walls and parking garages adjacent to CSX tracks will provide noise mitigation measures for townhouses and multi-family residential; some trees have been retained along the Metro Access Road; new public and private open spaces are integrated throughout the development; and new streetscape is proposed with street trees. These measures will substantially implement the Sector Plan's environmental recommendations.

Staging

The Sector Plan establishes a staging plan that is centered on the potential redevelopment or retention of the CSP with different levels of residential and non-residential development allowed. The three phased staging plan specified the amount of residential development and non-residential development along with required infrastructure triggers, if the CSP was retained or redeveloped. The Sector Plan recommends that "housing capacity of 2,480 units and 520 jobs will be held for development on Jeremiah Park and the Metro North Neighborhood (CSP), unless the Executive branch determines that a land exchange is not feasible or fails to enter into an agreement with a private developer to relocate the CSP within two years of the adoption of the Plan." Further, the Executive Branch was given two years from the adoption of the Sector Plan to complete negotiations to relocate the CSP.

The Planning Board has weighed the Executive Branch's efforts to finalize negotiations with the two year reservation recommended in the Sector Plan and believes that although a development agreement was finalized after the two year reservation period expired, the efforts to achieve the intent of the Sector Plan were in substantial conformance with the Master Plan's recommendations. This Preliminary Plan allows for

the complete implementation of the total amount of development, public facilities, and infrastructure recommended in the Sector Plan. In light of this, and considering all of the Master Plan's objectives, even if the Board could not find that timing of the negotiations' completion substantially conformed to the Master Plan, the Board would find that recommendation to be no longer appropriate.

The Preliminary Plan will implement the Sector Plan's staging recommendations since it provides an elementary school site; a local library; public parks, including Jeremiah Local Park; transportation mitigation agreements will be required when a site plan is submitted; and there is sufficient capacity to accommodate the total amount of development.

Density

The Preliminary Plan density is generally consistent with Sector Plan's overall recommendations. The Sector Plan established base densities while using bonus density provisions through Workforce Housing, Transferable Development Rights (TDRs), and Moderate Priced Dwelling Units (MPDUs) to increase the amount of residential development. The Sector Plan recommends that "base density can be increased by 10 percent workforce housing, 20 percent Transferable Development Rights (TDRs), and 22 percent Moderate Priced Dwelling Units (MPDUs)."

The Sector Plan also envisioned joint development between the CSP and Casey 6 and 7, which are two properties northwest of the intersection of Shady Grove Road and Crabbs Branch Way. In March 2007, the Planning Board approved preliminary plan (#1-20070320) for Casey 6 and 7 with 340 dwelling units and 329,300 square feet of office development. These properties were owned by EYA, but were later purchased by Montgomery County and the State of Maryland to accommodate some of the current CSP uses and the maintenance facility for the Inter-county Connector (MD 200), respectively.

The Preliminary Plan proposes 689 dwelling units on SGS East and 1,521 dwelling units on SGS West. The Sector Plan recommends "up to 700 units with bonus" densities on SGS East (p.52). And, up to "1,540 units with bonus density if jointly developed with Casey 6 and Casey 7" on SGS West (p.44).

The residential density on SGS East is within the Plan's recommendation. Since joint development is no longer possible on Casey 6 and 7, the higher base density for SGS West increases the amount of residential development, including affordable housing, within close proximity to the Metro Station, and it is within the Metro Neighborhoods concept of the Sector Plan. This additional residential development will only occur on SGS West, which is within the Sector Plan's Metro Neighborhoods. The Metro Neighborhoods are envisioned as the area of the Sector Plan where the intense development will occur. Relocating additional units from the Casey properties to the Metro Neighborhoods is consistent with the overall density recommendations of the Sector Plan, and with the Plan's goal of targeting density closest to the Metro.

Unit Mix

The Sector Plan recommends a mix of residential unit types must be provided throughout the CSP. The Applicant will provide a range of units, including multi-family residential, townhouses, and 2 over 2 multi-family units as well as MPDU and Workforce units.

Building Heights

The Preliminary Plan building heights substantially conform to the Sector Plan recommendations. For Shady Grove Station West, the Sector Plan recommends "limiting building heights to eight stories closest to the Metro and stepping down to four stories along Crabbs Branch Way for a compatible transition" and "limiting townhouse building heights to 4 stories with multi-family units up to five stories. Maintain a 4 story building height along Crabbs Branch Way" for SGS East. Both multi-family residential buildings and townhouses building heights will be determined at Site Plan review. However, no buildings will exceed 70 feet in height.

Public Facilities

The Preliminary Plan provides a local library, a dedicated elementary school site, and a local park site, Jeremiah Park. The Sector Plan designates "Jeremiah Park as the preferred site for an elementary school"; it recommends "a minimum of four acres for an urban park in the Transition Area, called Jeremiah Park after Derwood's founder," and a local library in the Metro North-CSP neighborhood.

Although the library is not located at Shady Grove Road and Crabbs Branch Way as recommended in the Sector Plan, the Planning Board finds that the library location within the most compact area of the development is appropriate. The Board also accepts the recommendations of the Department of Public Libraries. County-wide, the Department of Public Libraries is providing smaller libraries because of fiscal and budgetary challenges and new innovations in technology. Further, a large regional library was recently built in Rockville, which is one Metro stop south from Shady Grove.

The dedication of the public park and school site are important public facilities that will implement the Sector Plan recommendations. The school site is important since there are capacity limits at the elementary school level. The Planning Board finds that the location of the elementary school shown on the Preliminary Plan is contrary to the Sector Plan recommendations. Further, it does not take advantage of operational efficiencies by co-locating the school with the park. Therefore, the Planning Board finds, and as a condition of this approval requires, that the Applicant must co-locate both facilities when a Site Plan is submitted for Shady Grove Station East or by January 1, 2017, whichever comes first.

Transferable development rights (TDRs)

The Preliminary Plan is subject to Section 59-C-13.2431 and Section 59-C-13.2433 of the Zoning Ordinance, special regulations for development using transferable development rights in the TOMX/TDR zone and development approval procedures under the standard and optional method of development. The overall dwelling units per acre (dus/acre) is 24.5, while the total Floor Area Ratio (FAR) is 1.125.

Both the dwelling units per acre and FAR measures are above the standard method threshold (0.5 FAR or 20 dus/acre) that requires TDRs, but below the optional method threshold that requires TDRs (1.6 FAR or 40 dus/acre). The Applicant proposes to build 279 TDR bonus units, all multi-family, and to provide 93 TDRs (64 for SGS West and 29 for SGS East) for the development. The Planning Board finds that this is consistent with Section 59-C-13.2431 of the Zoning Ordinance, which requires TDRs in a Metro Station Policy at a ratio of one TDR for three multi-family dwelling units.

Affordable Housing

The Sector Plan encourages maximizing affordable housing, including through the provision of MPDUs and workforce housing.

The Preliminary Plan will provide 476 dwelling units (21.5 percent) of the total residential development as affordable units, Workforce Housing units and MPDUs. The Applicant will provide 169 workforce housing units throughout the development, including 116 workforce dwelling units (25 townhouses and 91 multi-family dwelling units) in Shady Grove Station West and 53 workforce dwelling units (30 townhouses and 23 multi-family dwelling units) in Shady Grove Station East. Since the adoption of the Sector Plan and the TOMX/TDR zone, the requirement for workforce housing is now optional rather than required.

The Applicant will also provide 307 Moderately Priced Dwelling Units (MDPUs) in the development, including 211 MPDU residential units (44 townhouses and 167 multi-family) in Shady Grove Station West and 96 MPDU residential units (47 townhouses and 49 multi-family) in SGS East. The Applicant is utilizing the bonus provision in the zone for MPDUs. Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds the Preliminary Plan substantially conforms to the Approved and Adopted 2006 Shady Grove Sector Plan.

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

Site Location and Vehicular Site Access Points

The Property is located south of Shady Grove Road and Crabbs Branch Way and is within 1/2 of a mile from the Shady Grove Metro Station entrance. Primary vehicular access to the property is from Crabbs Branch Way.

Transportation Demand Management

The Property is within the boundary of the Greater Shady Grove Transportation Management District (TMD). The Applicant must enter into a traffic mitigation agreement to participate with the TMD and assist the County in achieving and maintaining its non-auto driver mode share (NADMS) goals as required by the conditions.

The Sector Plan recommends that any new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area must achieve the non-auto-driver mode share goals reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips.

Public Transit Service

The Shady Grove Metrorail Station is located within walking distance from the subject property. Ride-On routes 43 and 61 operate along Shady Grove Road along the northern property frontage. Currently, no bus routes operate along Crabbs Branch Way between Shady Grove Road and Redland Road.

Sector-Planned Roadways and Bikeways

In accordance with the *Sector Plan* and the *Countywide Bikeways Functional Master Plan*, the classified roadways and bikeways are as follows:

1. Crabbs Branch Way is designated as a four-lane divided commercial business district street, B-2, with a recommended 100-foot right-of-way. The Applicant proposes 8-foot-wide shared use path on the east side of the road, consistent with the Countywide requirements for shared use path, SP-53.

2. Shady Grove Road, between the western plan area boundary and I-370 is designated as a six-lane divided major highway, M-42, with a recommended 150-foot right-of-way and a Countywide bike lanes, BL-30.
3. The (Shady Grove) Metro Access Road is a four-lane divided major highway, M-94, with a recommended 150-foot right-of-way and Sector Plan shared use path, B 7. In addition, the Sector Plan recommends a partial interchange with Crabbs Branch Way.
4. The entire segment of master-planned Road "F" (proposed as Road "P") is designated as a two-lane business district street, B-9, with a recommended 70-foot rights-of-way. This street is proposed as a private street serving the proposed commercial area. As specified in the conditions, the Applicant must satisfy certain "private road" requirements.
5. The relocated segment east of Crabbs Branch Way of master-planned Road "I" (proposed as Road "DD") is designated as a two-lane business district street, B-12, with a recommended 70-foot rights-of-way. This street must be a public street as it serves as access to the proposed public school site. A private maintenance and liability agreement, however, may be permitted to allow the Applicant to build stormwater management facilities within the right-of-way.
6. The segment west of Crabbs Branch Way of master-planned Road "I" (proposed as Road "I") is designated as a two-lane business district street, B-12, with a recommended 70-foot right-of-way. This street is proposed to be a private street serving the proposed commercial area. As specified in the conditions, the Applicant must satisfy certain "private road" requirements.
7. The entire segment of master-planned Road "J" (proposed as Road "JJ") is designated as a two-lane business district street, B-13, with a recommended 70-foot right-of-way. This street must be a public street as it serves as access to the proposed public school site. A private maintenance and liability agreement, however, may be permitted to allow the Applicant to build stormwater management facilities within the right-of-way.

Transportation Adequate Public Facilities Review

Table 1 below shows the net increase in the vehicular peak-hour trips generated by the proposed redevelopment during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.).

Table 1: Net Number of Site-Generated Trips

Tenant	Square Feet or Units	Peak-Hour Trips	
		Morning	Evening
Proposed Mixed Use Redevelopment			
Residential Townhouse	752	389 (201)	431 (250)
Mid-Rise Apartments	1,458	590 (384)	688 (399)
General Office Use	131,422	215 (162)	209 (146)
General Retail Use	41,828	82 (49)	328 (189)
Public Park, Library, & Elementary School Site	n/a	n/a	
Subtotal		1,276 (796)	1,656 (984)
Trip Credit for the Existing Traffic generated by the County Service Park		290	536
Net Increase in Peak-Hour Trips		986 (506)	1,120 (448)

Total vehicular trips were reduced based on the following:

- Close Proximity to Metrorail Station: The percent of trips generated by nearby developments that use transit rather than their automobile during the weekday morning and evening peak hours based on the results of WMATA's Development-Related Ridership Survey.
- Compatible Land Uses: The percent of the trips that can use non-automobile transportation modes to travel between compatible land uses within a mixed-use development, such as between apartments/townhouses and retail businesses.

The trip credit was determined for the existing trips generated by the County Service Park facilities located along Crabbs Branch Way. Driveway counts were collected at the existing curb cuts with the selected peak hour being the highest of the three hours within morning and evening peak periods at the critical intersection of Shady Grove Road and Crabbs Branch Way. The trips shown in Table 1 above are total trips that include the new, diverted, and pass-by trips, reduced for close proximity to Metro and compatible land uses, as described in a. and b. above. The new trips are shown in parentheses after the total trips.

In accordance with the Local Area Transportation Review and Policy Area Mobility Review Guidelines, a traffic study is required to satisfy LATR test because the net number of peak-hour trips generated by the proposed redevelopment is 30 or more peak-hour trips within the weekday morning and evening peak periods. Based on the result of the traffic study, Table 2 below shows

the calculated Critical Lane Volume (CLV) values at the analyzed intersections in the following traffic conditions:

1. Existing: Existing traffic conditions as they exist now.
2. Background: The existing condition plus the trips generated from approved but un-built nearby developments.
3. Total: The background condition, minus the County Service Park trips, and plus the mixed use redevelopment trips.

As noted with an asterisk in Table 2 below, these CLV values in the total traffic condition are less than the CLV values in the background traffic condition. The net traffic impact by the proposed redevelopment was determined by removing the trips generated from the County Service Park facilities and adding the trips generated by the proposed mixed use redevelopment. As a result, the trips to/from the County Service Park travel in the reverse direction compared to the trips from/to the proposed 2,210 housing units, especially to/from the west on Shady Grove Road.

Table 2: Critical Lane Volume Values

Analyzed Intersection	Weekday Peak Hour	CLV Congestion Standard	Traffic Condition		
			Existing	Back-ground	Total
Shady Grove Road & Epsilon Drive	Morning	1,475	1,358	1,387	1,368*
	Evening		1,229	1,254	1,206*
Shady Grove Road & Briardale Road	Morning	1,475	1,380	1,409	1,390*
	Evening		1,400	1,424	1,377*
Shady Grove Road & I-370 Northbound Ramp	Morning	1,800	928	945	939*
	Evening		1,356	1,380	1,322*
Shady Grove Road & I-370 Southbound Ramp	Morning	1,800	855	874	902
	Evening		964	1,015	1,001*
Shady Grove Road & Crabbs Branch Way	Morning	1,800	1,035	1,105	1,171
	Evening		1,135	1,200	1,299
Shady Grove Road & Oakmont Avenue	Morning	1,800	1,129	1,163	1,208
	Evening		1,003	1,045	1,035*
Shady Grove Road & Solid Waste Transfer Driveway	Morning	1,800	797	831	876
	Evening		760	790	840
Shady Grove Road & Frederick Road (MD 355)	Morning	1,800	1,564	1,626	1,657
	Evening		1,427	1,492	1,550
Redland Road & Needwood Road	Morning	1,475	845	888	889
	Evening		789	831	828*
Redland Road & Crabbs Branch Way	Morning	1,800	1,104	1,174	1,263
	Evening		1,054	1,144	1,158
Redland Road & Shady Grove Metro Access Road	Morning	1,800	934	1,010	1,032
	Evening		716	775	777
Redland Road & Somerville Drive	Morning	1,800	562	620	632
	Evening		832	889	900
Crabbs Branch Way & Indianola Drive	Morning	1,800	1,094	1,125	1,220
	Evening		979	998	1,105
Indianola Drive & Frederick Road (MD 355)	Morning	1,500	1,117	1,153	1,185
	Evening		984	1,017	1,057
Redland Road & Needwood Road	Morning	1,475	1,041	1,169	1,207
	Evening		1,030	1,077	1,114

The CLV values at all analyzed intersections in all traffic conditions are less than their congestion standard and, thus, the LATR test is satisfied.

Policy Area Mobility Review (PAMR)

Under the current *Subdivision Staging Policy*, the Applicant must satisfy PAMR by mitigating 5% of the new peak-hour trips generated by the proposed mixed-use development. The Applicant proposes to pay \$292,500 (or 11,700 times 25 [5% of 506 morning peak-hour trips]) to MCDOT to fund transportation improvements located in the PAMR Derwood/Shady Grove Policy Area.

Other Public Facilities and Services

Except for schools, other public facilities and services are available and will be adequate to serve the proposed development. This site is served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the property. Police stations, firehouses, and health services are currently operating within the standards set by the effective Subdivision Staging Policy.

This Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS), which has determined that the property has adequate access for emergency vehicles.

The Property is located within the Gaithersburg High School Cluster, which requires a School Facilities Payment at the elementary school level. This amounts to \$868.78 per residential townhouse, \$456.80 per multi-family garden apartment, and \$34.42 per high/low rise residential apartment at the elementary school level. The School Facilities Payment must be made prior to the issuance of any residential building permit covered by this Preliminary Plan. Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds public facilities are adequate to support and service the area of the Preliminary Plan.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The lots have been reviewed for compliance with 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

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

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the site was approved on June 15, 2012. The site contains no forest, streams or their buffers, wetlands or their buffers, 100-year floodplains, or rare, threatened or endangered species.

A. *Forest Conservation*

The Preliminary Forest Conservation Plan submitted with the Preliminary Plan indicates that 5.31 acres of forest are slated for removal for the development of this project. This will result in a total afforestation and reforestation requirement of 19.94 acres. The Applicant proposes to meet this requirement through a combination of landscape credit and offsite forest conservation banking. Due to the size of the site and the amount of forest being cleared, this project does not qualify for the use of fee-in-lieu payments to meet its mitigation requirements. Final amounts of landscape credit and offsite forest banking to meet the mitigation requirement will be determined by the Final Forest Conservation Plan. The Preliminary Forest Conservation Plan does not propose any Category I easements on site. The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

B. Forest Conservation Variance

The Applicant is requesting a variance for the removal of 18 specimen trees on the Property that are 30 inches or greater in diameter. Ten are on Shady Grove Station West and eight are on Shady Grove Station East. These trees are listed in the table below:

Tree Number	Species	DBH	Status
4	<i>Quercus rubra</i>	33"	Remove
5	<i>Tilia cordata</i>	34"	Remove
14	<i>Carya tomentosa</i>	35"	Remove
16	<i>Carya tomentosa</i>	32"	Remove
20	<i>Quercus phellos</i>	30"	Remove
21	<i>Quercus phellos</i>	30"	Remove
30	<i>Pinus virginiana</i>	32"	Remove
31	<i>Fraxinus pennsylvanica</i>	32"	Remove
32	<i>Quercus rubra</i>	31"	Remove
33	<i>Acer rubrum</i>	41"	Remove
39	<i>Acer rubrum</i>	37"	Remove
54	<i>Quercus rubra</i>	41"	Remove
55	<i>Liriodendron tulipifera</i>	37"	Remove
57	<i>Liriodendron tulipifera</i>	31"	Remove
60	<i>Liriodendron tulipifera</i>	34"	Remove
61	<i>Liriodendron tulipifera</i>	30"	Remove
63	<i>Liriodendron tulipifera</i>	30"	Remove
65	<i>Liriodendron tulipifera</i>	31"	Remove

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.

An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure;

are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on June 4, 2012 for the impacts/removal to trees with the proposed layout. The Applicant proposes to remove 18 trees that are 30 inches or greater DBH and to impact, but not remove, 5 others that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Unwarranted Hardship Basis

The proposed development is in accordance with both the intent and recommendations of the Sector Plan and the Transit-Oriented Mixed Use /Transferable Development Rights (TOMX-2/TDR) zone, both of which are intended to create higher density uses in the vicinity of the Shady Grove Metro Station. The SGS West portion of the site lies closest to the Metro station and is recommended for transformation into an urban village. The SGS East portion of the site is identified as a transition area between the more intensely developed Metro neighborhoods and the existing nearby residential communities and is envisioned to provide multi-family and townhouse residential units, a local park, and an elementary school site. The combination of urban scale of development, medium-to-high density residential development, and major public facilities and amenities further constrains the site. This allows site to be intensely developed to achieve the Sector Plan's vision.

Variance trees numbering 4, 5, 14, 16, 20, 21, 30, 31, and 33 are all isolated trees that currently stand in the middle of the site, primarily in islands in the middle of parking lots. Variance trees numbering 55, 57, 60, 61, 63, and 65 occur along the site's southwestern boundary with the CSX railroad right-of-way where two large parking structures are proposed. Saving these trees would require major changes to the proposed development and would challenge the ability of the project to meet the goals of the Sector Plan.

Variance trees numbering 32, 39, and 54 lie along the edges of the site. The proposed limits of disturbance would affect significant portions of the critical root zones of these trees and indicate that the trees will need to be removed. These three trees should be reexamined at the time of Site Plan to see if modifications can be made to the grading and limits of disturbance that would allow these trees to be saved.

Variance trees numbering 35, 36, 37, and 38 were originally proposed for removal. These trees lie along the northeast boundary of the Property at the edge of a small off-site forest stand. At staff's request, the Applicant worked to pull back adjacent development and reduce impacts to these trees. Most of the critical root zone impacted lies under an existing road around the edge of the Property; this means that most of these trees' root systems will be found in the forest behind the trees rather than under the existing pavement. Staff believes that these trees can be saved with appropriate tree protection measures.

Tree number 51, which is to be saved, will have no critical root zone impacts; therefore, technically, it does not need to be included in the variance.

Not allowing the removal of Variance trees numbering 4, 5, 14, 16, 20, 21, 30, 31, 32, 33, 39, 54, 55, 57, 60, 61, 63, and 65, and the impacts to Variance trees numbers 35, 36, 37 and 38 would require major changes to the proposed development design which is proposed to be consistent with the Sector Plan. Staff concurs that the Applicant has a sufficient unwarranted hardship to consider a variance request.

Variance Findings

The Planning 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.*

The Planning Board finds that the removal of 18 variance trees is consistent with the requirements and constraints of the Sector Plan, the zone, and what is intended for the property, public facilities, and road networks. Granting the variance would not confer on the Applicant a special privilege that would be denied to other applicants.

The proposed design has attempted to balance all of the competing factors that constrain the site. While 18 variance trees will need to be removed, the Applicant has modified its plans to reduce the number of variance trees that must be taken. Impacts to the other variance trees have been limited and, as a result, they will likely be preserved. Given the intensity of the development, impacts to variance trees are to be expected.

The Planning Board believes that reasonable steps have been taken to minimize impact to variance trees, and that granting the variance will not confer a special privilege to the Applicant.

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

The Planning Board finds that the variance is based on the constraints of the site and the proposed development density, public facilities, and road network are recommended in the Sector Plan, rather than on conditions or circumstances which are the result of actions by the Applicant.

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 Planning Board finds that the variance is a result of the proposed site design and layout on the Property, and not as a result of land or building use on a neighboring property. There are no conditions relating to land or building use, either permitted or nonconforming, on a neighboring property that have played a role in the need for this variance.

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

The Planning Board finds that granting the variance will not violate State water quality standards or cause measurable degradation in water quality. The Montgomery County Department of Permitting Services (DPS) has approved a stormwater management concept, dated June 13, 2012 for the Property. The Stormwater Management (SWM) concept plan incorporates a combination of on-site structural water quality treatment facilities and Environmental Site Design (ESD) practices including micro-scale treatment facilities and alternative surfaces. Runoff in excess of the ESD treatment volume will continue to be treated by the Crabbs Branch Regional stormwater management pond. The addition of on-site ESD practices should improve the water quality of runoff generated by this property.

Mitigation for Trees Subject to the Variance Provisions

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. There are 18 trees proposed for removal as a result of the proposed development. There will also be some disturbance within the CRZ of another 4 trees but they are excellent candidates for safe retention. No mitigation is recommended for trees impacted but retained.

Therefore, the Planning Board is requiring the replacement occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 601 caliper inches of trees removed, the required mitigation will be 50 native canopy trees with a minimum size of 3" DBH. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. The Planning Board is also requiring the 50 native canopy trees with a minimum size of 3" DBH to the landscape plan. Because these trees are in mitigation for specimen trees removed, they do not count toward afforestation requirements.

5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "Storm Water Management," Sections 19-20 through 19-35.*

A stormwater management concept plan was approved by the MCDPS on June 13, 2012, meeting stormwater management requirements through a variety of Environmental Site design techniques and structural stormwater management facilities.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successors in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 85 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 [modify as required if Board approves phases with concurrent validity periods – or delete if phased validity periods are set forth in conditions of approval]; and

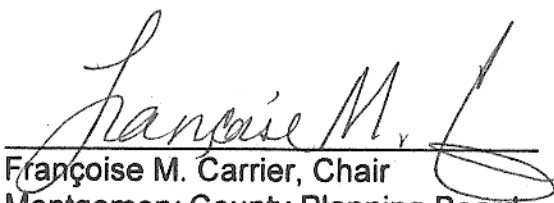
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 11 2012 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, September 6, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

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