



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

MCPB No. 13-84
Preliminary Plan No. 120050950
Tapestry
Date of Hearing: May 30, 2013

JUL 19 2013

RESOLUTION

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

WHEREAS, on May 4, 2005, Miller and Smith at Tapestry, L.L.C. ("Applicant"), filed an application for approval of a preliminary plan of subdivision to create 82 lots on 38.82 acres of land in the R-200 zone, located on the west side of Frederick Road and on the north and south sides of West Old Baltimore Road, in the Clarksburg Master Plan and Hyattstown Special Study Area Master Plan,

WHEREAS, Applicant's preliminary plan application was designated preliminary plan No. 120050950, Tapestry; and

WHEREAS, following review and analysis of the application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 13, 2007, setting forth its analysis and recommendation for approval of the application, subject to certain conditions; and

WHEREAS, on July 26, 2007, 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, at the hearing the Planning Board voted to accept a request by the Applicant to defer action on the application to address concerns related to the layout of the lots shown on the preliminary plan, and

WHEREAS, the Applicant filed a revised application for approval of a preliminary plan of subdivision that would create 67 lots on 30.33 acres of land in the R-200 zone, located on the west side of Frederick Road and on the north and south sides of West Old Baltimore Road ("Subject Property") in the Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan") and within the Clarksburg Policy Area, and

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

WHEREAS, Applicant's revised preliminary plan application was not given an alternative designation and was accepted under the previous designation as Preliminary Plan No. 120050950, Tapestry ("Preliminary Plan" or "Application"), and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated May 20, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions; and

WHEREAS, on May 30, 2013, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below:

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board approves Preliminary Plan No. 120050950 to create 67 lots on the Subject Property, subject to the following conditions:¹

1. Total development is limited to 67 residential units on 67 lots with a minimum of 10 MPDUs to include 57 one-family detached and 10 one-family semi-detached units.
2. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its letter dated April 1, 2013, for the Preliminary and Final Special Protect Area Water Quality Plan No. 820050370, and hereby incorporates them as conditions of this approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of this approval.
3. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan No. 820050370, approved as part of this Preliminary Plan, subject to:
 - a. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 - b. A Category I conservation easement must be shown on the record plat(s) over all areas of forest retention and forest planting that will not be dedicated to the M-NCPPC Department of Parks as shown on the approved Final Forest Conservation Plan.

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

- c. Reforestation must begin within the first planting season after issuance of the first grading permit, with appropriate phasing to allow for construction of sediment and erosion control structures and other utilities.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Additional or adjustments to the tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 - e. The Applicant must submit financial security for planting 0.50 acres of forest prior to the start of clearing and grading.
 - f. Reforestation Area G, as shown on the Final Forest Conservation Plan, must be accessed by foot for planting and maintenance.
 - g. The Applicant must obtain M-NCPPC approval of a five-year maintenance and management agreement prior to M-NCPPC accepting any on-site planting.
 - h. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easements.
 - i. Prior to land disturbing activities, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of a M-NCPPC-approved offsite forest mitigation bank to satisfy the offsite forest mitigation planting requirements. The offsite forest mitigation requirement must be met within the Clarksburg Special Protection Area or within the Seneca Creek watershed.
4. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated August 27, 2012, and hereby incorporates them as conditions of this approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of this approval.
 5. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in two letters dated April 2, 2013 regarding the review of the Traffic Impact Study and review of roadway Design Exceptions, and hereby incorporates them, as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of this approval.
 6. Record plat(s) to reflect the County Council Resolution reference that abandons the portion of the West Old Baltimore Road right-of-way under abandonment application AB 671 and to include a revertible public access easement, as required by MCDOT, to provide continued public use of pavement until re-aligned West Old Baltimore Road is completed and accepted for maintenance.

7. Dedicate all road rights-of-way as shown on the approved Preliminary Plan:
 - a. MD 355: 120 feet from opposite right-of-way, where applicable or 60 feet from centerline of the future right-of-way
 - b. West Old Baltimore: 80 foot right-of-way
 - c. Public Streets "A" and "B": 60 foot right-of-way
 - d. Public Street "C": 54 foot right-of-way
8. The Applicant must satisfy Local Area Transportation Review (LATR) requirements for the West Old Baltimore Road/MD 355 intersection by either:
 - a. Enter into a road club, other funding mechanism, or a participation agreement to reconstruct the intersection as approved by MDSHA and MCDOT; or
 - b. Permit and bond or have under contract for construction, the intersection improvements, as approved by MDSHA and MCDOT, prior to issuance of the 48th building permit.
9. Construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the design standards of all applicable road codes or as approved by MCDOT and MDSHA unless otherwise noted on the Preliminary Plan "To Be Constructed by Others". Frontage improvements that are the sole responsibility of the Applicant must be coordinated with the intersection improvements at West Old Baltimore and MD 355 and include:
 - Construct an 8-foot wide shared use path along the Subject Property frontage with MD 355 from northern property line to end at Greenbrook Drive
 - Construct curb and gutter on west side of MD 355 from northern property line to just south of entrance for the Greenridge Baptist Church
 - Construct median and other pavement widening requirements beyond those required under the LATR intersection improvements on West Old Baltimore at MD 355.
 - Public Streets "A", "B", and "C" interface with West Old Baltimore Road.
10. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
11. The Applicant must dedicate to M-NCPPC the 5.15 acre portion of the Subject Property identified as "Parcel G" on the approved Preliminary Plan for use as a conservation park per the Clarksburg Master Plan. The land must be dedicated to the Commission through notation on the record plat and by conveyance at the time of record plat in a form of deed approved by the Office of General Counsel. At the time of conveyance, the property must be free of any trash and unnatural debris.
12. The final number of MPDUs as per condition #1 above to be determined at the time of Site Plan.
13. Prior to recordation of any plat, Site Plan No. 820050370 must be certified by MNCPPC Staff.

14. 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.
15. Final approval of the number and location of buildings, on-site parking, site circulation, and sidewalks will be determined at Site Plan.
16. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff in accordance with the Site Plan requirements that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
17. 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 each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
18. The record plat must show necessary dedications and easements.
19. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Resolution.

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

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

The Subject Property is located in the 860 acre Brink Road Transitional Area at the southernmost entry point to Clarksburg along MD 355. The key land use recommendations of the Master Plan for the Brink Road Transitional Area are summarized below:

- *Create a transition from Germantown to Clarksburg that helps reinforce each community's identity (page 75).*

The Brink Road Transition Area lies just north of the Germantown greenbelt, which forms a green buffer between Germantown and Clarksburg. To further

reinforce the transition from Germantown to Clarksburg, the Master Plan proposes that the entry to Clarksburg from the south be characterized by low-density residential development (two to four units per acre). The Master Plan suggests that this density will allow single-family units that and be supportive of the existing residential land use pattern along MD 355.

The lot layout of the Preliminary Plan is sensitive to maintaining the green edge as one approaches the Subject Property from the south on MD 355. The development provides a gradual transition from the Germantown greenbelt to the higher density development proposed to the north of the Subject Property. The Application establishes much of the MD 355 frontage in green space, Park and forest and frames both sides of West Old Baltimore Road at MD 355 with landscaped open space. North of West Old Baltimore Road, homes front to MD 355 in accordance with the recommended land use in the Master Plan. The northernmost tip of the Subject Property will be established as green space which begins the transition as one travels south on MD 355 to enter the Germantown greenbelt.

- *Continue the residential character of MD 355 (page 75).*

The Master Plan recommends that MD 355 be widened to four lanes in this portion of the planning area but that a traditional residential pattern be maintained with homes that front to this highway. The Application continues this traditional pattern of homes but also accommodates open spaces that will separate units at certain locations to provide green vistas between homes.

- *Reinforce the North Germantown greenbelt concept (page 76).*

The Master Plan suggests that the stream valley buffers and parks create the open space pattern in the Brink Road Transitional Area. The Master Plan encourages pedestrian connections to the Little Seneca Creek Greenway as development proceeds.

The Applicant will dedicate the 5.67 acres of forested open space area at the southeast end of the Subject Property to M-NCPPC for protection of natural resources and additional access to adjacent parkland from the subdivision and MD 355. The Application establishes a direct connection between the development and the park by dedicating this land and building a portion of the shared use path along MD 355 that connects into the project's internal sidewalks and those along West Old Baltimore Road.

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

Site Access, Vehicular, and Pedestrian Circulation

There are three new public streets that have separate access points to West Old Baltimore Road, one on the north side and two on the south side of West Old Baltimore Road. All of the lots will have frontage on a public street. A system of wide, private alleys with on street parking provide vehicular linkages between the public streets within the development and also provide access to rear load garages for some units.

Internal public streets "A" and "B" are within a 60-foot wide dedicated rights-of-way and have 28 feet of pavement with on street parking. Public Street "C" will have 20 feet of pavement within a 54-foot wide right-of-way. The public streets and alleys are well connected and provide good vehicular circulation. One segment of alley to the rear of Lots 23 through 31, Block B serves those rear loaded garages and has no through connection, however, the alley does have a turnaround at its terminus to provide vehicular three point maneuvers.

The proximity of the Street "B" intersection to the intersection of West Old Baltimore Road and MD 355 requires that turning movements into and out of Street "B" from West Old Baltimore Road will be restricted to right-in/right-out. This restriction will be dictated by a new median in West Old Baltimore Road that will physically prohibit left-in/left-out turns.

West Old Baltimore Road will be re-aligned and rebuilt with sidewalks on both sides within a minimum 80-foot wide right-of-way. MD 355 and the intersection with West Old Baltimore Road will undergo significant reconstruction to meet the Application's Local Area Transportation Review requirements as well as other developments. The Applicant will construct a shared use path on MD 355 from the Subject Property's northern boundary south to end opposite Greenridge Drive. Internal public streets "A", "B" and "C" will have 5-foot wide sidewalks that are conveniently located in close proximity to each unit and connect to the shared use path along MD 355 and to the sidewalks along West Old Baltimore Road. In addition, an internal natural surface trail is connected to the pedestrian system near the area of park dedication.

The Planning Board finds that vehicular and pedestrian access and circulation is adequate for this Application.

Local Area Transportation Review (LATR)

The intersections of MD 355/West Old Baltimore Road and MD 355/Brink Road were identified as critical intersections for analysis to determine whether they meet the applicable congestion standard of 1,425 Critical Lane Volume (CLV) for the Clarksburg Policy Area. The vehicular trips generated by the Application were added to the existing and background traffic to determine the total future traffic. The total future traffic was assigned to the critical intersections to calculate the total future CLVs.

The MD 355/Brink Road intersection is currently operating at an unacceptable congestion standard that is higher than 1,425 CLV during the AM and PM peak hours. Under the background development condition, both of the intersections analyzed exceed the acceptable congestion standard of 1,425 CLV during the AM and PM peak hour. Under the total development condition, the congestion at these two intersections further deteriorates and both must be improved.

MD 355/West/Old Baltimore Road intersection

As provided by LATR and Transportation Policy Area Review Guidelines, the Applicant will participate in the reconstruction of the intersection of MD 355 and West Old Baltimore to alleviate the CLV issue at that intersection. As a development that contributes less than 25% of the total sum trips to the intersection, the LATR guidelines allow the Applicant to participate in this project with other developments also required to make this improvement for APF. The Applicant has signed a Letter of Intent with MCDOT who will coordinate this project with the other participants. The final participation agreement is under review by MCDOT and the participants.

The applicant for the Goddard School-Clarksburg project (12011002A) is also required to participate in this intersection improvement. The Goddard School applicant also signed a Letter of Intent to participate with MCDOT and others in the completion of this project and was subsequently issued building permits on November 13, 2012. This date starts a 3-year clock in which the LATR guidelines suggest that the intersection participation project should be under construction or otherwise permitted, bonded or under contract for construction.

MCDOT anticipates that the intersection will be under construction prior to November of 2015. In the event that the Applicant fails to enter into a final participation agreement with MCDOT, the Planning Board conditions of approval prohibit the issuance of any building permit beyond the 47th until the Applicant permits and bonds the intersection or has a contract for construction in place to the satisfaction of MCDOT and MCDPS. Improvements at the intersection include:

- On MD 355: An exclusive northbound left-turn lane and an exclusive southbound right-turn lane on MD 355 to westbound West Old Baltimore Rd.
- On West Old Baltimore Road: Two eastbound lanes approaching MD 355 (one left-turn and one right-turn lane) and a 16-foot wide westbound lane from MD 355 and tapering to a 12-foot travel lane beyond median.

With these roadway improvements at the MD 355/West Old Baltimore Road intersection, it is projected to operate at the acceptable congestion standard under the total development condition.

MD 355/Brink Road intersection

The Applicant must also participate in the construction of A-305 from MD 355 to Clarksburg Road (MD 121) to address unacceptable CLV levels at the MD 355/Brink Road intersection. The construction of this section of A-305 was also the area-wide transportation review condition for approval of the Woodcrest subdivision (Preliminary Plan No. 1-04039) by Miller and Smith, the Applicant. For the Tapestry project, the LATR Guidelines permit the Applicant to provide a trip mitigation program that results in improved operating conditions equal to 150 percent of the CLV impact attributable to the development that would occur without the Applicant's development. With redistributed traffic as a result of the Applicant's participation in the A-305 construction, the total traffic condition at the MD 355/Brink Road intersection is projected to improve traffic conditions compared to the background development condition.

With the improvements required by the conditions of approval, Planning Board finds that the Application satisfies the LATR requirements.

Transportation Policy Area Review (TPAR)/Policy Area Mobility Review (PAMR)

The Application is located in the Clarksburg Policy Area. According to the 2012-2016 Subdivision Staging Policy (SSP), the Clarksburg Policy Area is adequate under the roadway test and inadequate under the transit test, requiring 25% of the Impact Tax payment under the recently adopted TPAR Guidelines. However, the Application was completed and submitted before January 1, 2013. Therefore, according to the current SSP, the Application may meet its requirement under *Transportation Policy Area Review* by either complying with all applicable requirements of either Transportation Policy Area Review or Policy Area Mobility Review that were in force immediately before the County Council's SSP resolution, Resolution No. 17-601, amended in 2012. The Applicant chose PAMR. According to the applicable PAMR provision, an application that was submitted prior to July 1, 2011 must apply the trip mitigation requirements in effect by the FY 2012 PAMR. For the Clarksburg Policy Area, there was no

PAMR trip mitigation requirement in FY 2012; therefore, the Application meets the TPAR requirement under the current SSP.

Other Public Facilities

All other public facilities and services are adequate to serve the proposed development. The Subject Property is located in the Clarksburg High School cluster. Clarksburg High School and all middle and elementary schools within this cluster are operating at acceptable capacities; therefore, no school facilities payment is required.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The sizes, widths, shapes and orientations of all lots are appropriate for the location of the subdivision given the recommendation for the Brink Road Transition Area section of the Clarksburg Master Plan. The lots provide for a traditional residential pattern along MD 355 where the Master Plan recommends that homes are to front to the street.

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

The Application is subject to the Forest Conservation Law and a Final Forest Conservation Plan, including a variance for impacts and removal of certain trees otherwise required to be protected. The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD No.420102130) was approved on July 15, 2010 and identifies the environmental constraints and forest resources on the Subject Property. The Subject Property contains 22.6 acres of forest. There are 159 trees identified with a Diameter at Breast Height (DBH) of 24 inches or greater that are located on or within 100 feet of the property boundary.

The Application is subject to Section 22-A12(f), which requires that onsite forest retention must equal the conservation threshold of 20%, or 5.97 acres. The Forest Conservation Plan (FCP) reviewed by the Planning Board proposes to clear approximately 15.00 acres of existing forest and to retain approximately 7.60 acres of forest thereby meeting this requirement. Of the remaining forest, 5.03 acres will be protected through dedication to M-NCPPC Parks and the remaining 2.57 acres will be protected in a Category I conservation easement. The WSSC pump station sewer line easement area was deducted from the net tract area as was the forest within it. Any forest removal in the easement will be

accounted for by those who must build the sewer line in the future. The FCP includes also includes 0.07 acres of offsite area that will be disturbed as part of the Application. There is a 2.12-acre reforestation requirement that will be met by a combination of onsite reforestation (0.50 acres), onsite landscape credits (0.12 acres), and an offsite forest bank (1.50 acres).

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. 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, DBH; are part of an historic site or designated with an 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 ("Protected Tree").

The Application will require the removal of seventeen (17) Protected Trees, and impact, but not remove, 10 other Protected Trees. Under Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Planning Board made the following determination based on the required findings that granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the property. The Subject Property contains numerous large trees located within the developable area of the site and within the Master Planned road rights-of-way. Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this applicant.

2. *Is not based on conditions or circumstances that are the result of the actions by the Applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, Master Plan recommendations, and the development standards of the R-200 zone.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for a variance is a result of the existing conditions, the proposed site design and layout on the subject property, and fulfillment of Master Plan objectives.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. Reforestation and landscaping proposed on the site will replace the functions currently provided by the subject trees. In addition, MCDPS has found the stormwater management concept for the proposed project to be acceptable. The stormwater management concept incorporates Environmentally Sensitive Design.

The Planning Board finds that, with the conditions of approval, the Application complies with the Forest Conservation Law and that the Application protects all identified sensitive environmental features.

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

This finding is based in part upon the approval by MCDPS of a Special Protection Area Water Quality Plan that addresses site performance goals, stormwater management, sediment and erosion control and monitoring of Best Management Practices.

As part of the requirements of the Special Protection Area law, the Water Quality Plan must also be reviewed by the Planning Board to determine if environmental buffer protection, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

The Planning Board determined that the 4.53 acres of streams, wetland, and associated environmental buffer areas will be adequately protected by dedication to MNCPPC – Parks. The Board also determined that SPA forest conservation and planting requirements are satisfied with the approval of the Forest

Conservation Plan. The Board was also satisfied that the imperviousness shown on the Application has been reduced and minimized to the extent possible for a development in the R-200 zone using the MPDU optional method of development.

6. *With the approval of the Subdivision Regulations Waiver below, the approved lots are of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing neighborhood (as delineated in the Staff Report).*

Size: The existing lots range in size from 23,500 square feet to 86,613 square feet. The Application's lots range in size from 16,685 square feet to 23,527 square feet. As discussed in the Subdivision Regulation Waiver section, two lots, Lots 4 and 5, Block B, are the smallest in the Neighborhood. In this instance, the lots could be made larger in such a way that they are within the range of existing lot sizes and of the same character with the Neighborhood lots. However, as the Staff Report concluded, this would require that forest easements be placed on the rear of these two lots, rather than the separate HOA parcel that is now to the rear of Lots 4 and 5, Block B. In the review of the FCP, the Board stated that it is a preference to create the HOA parcel so that the easements are on a quasi-public property, rather than on private property. The Board is aware of the conflict that this creates, and determined that the Subdivision Waiver is appropriate to address the size criteria of the resubdivision analysis.

Frontage: At the street frontage, the width of existing lots range from 42 feet to 220 feet. For the Tapestry project, the proposed lots 1-5, Block B range in frontage width from 42 feet to 116 feet. The lots are similar in frontage width as the existing lots within the Neighborhood and of the same character.

Alignment: The existing lots are either perpendicular or radial to the street line. The lots will be either perpendicular or radial to the street and, therefore, of the same character.

Shape: There is a fairly wide variation in lot shapes in the existing Neighborhood with rectangular and pie shaped lots. The lots also are all either rectangular or generally pie shaped and are of the same character.

Width: The existing lots range in width at the building restriction line from 100 feet to 220 feet. The lots range in width from 100 feet to 124 feet. The lots fall within the range of widths in the Neighborhood. The lots are of the same character with respect to width.

Area: The buildable areas of lots in the Neighborhood range from 8,089 square feet to 64,246 square feet. The lots range in buildable area between 11,153 square feet and 17,062 square feet. The buildable areas of the lots are well within the range of areas for the existing lots in the Neighborhood, and are, therefore, of the same character.

Suitability for Residential Use: The existing and the lots shown on the Preliminary Plan are zoned residential and the land is suitable for residential use.

7. Subdivision Regulation Waiver

The Planning Board considered a Subdivision Waiver request from the Applicant to address a compliance issue with one of the seven resubdivision criteria for this Application. As discussed in the Resubdivision section above, proposed Lots 4 and 5, Block B are two of the five lots shown on the Preliminary Plan that are analyzed under the resubdivision criteria because they are located on land shown on a record plat. Since Lots 4 and 5, Block B, are the smallest in size as compared to other lots in the "resubdivision neighborhood," they technically are not of the same character with respect to the existing lots to which they are compared. Historically, creating the smallest lot(s) by a resubdivision has been reason for the Board to find that such lots are not of the same character, even though they meet all six other resubdivision criteria.

The Applicant requested a waiver of Section 50-29(b)(2) to waive the size criteria only, for Lots 4 and 5, Block B. The Planning Board's authority to waive requirements of Chapter 50 is found in Section 50-38 – *Waivers from this chapter*, which states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The Applicant's letter suggests that practical difficulties and unusual circumstances exist that prevent full compliance with the requirements of the resubdivision analysis, specifically the size requirement for Lots 4 and 5, Block A. To summarize the Applicant's letter, the size of Lots 4 and 5, Block B, represent the two smallest lots in the Neighborhood that was analyzed to evaluate the resubdivision. They are the smallest in order create an HOA parcel to the rear of the lots so to address a Planning Board practice that discourages forest easements on private lots. The Applicant's letter highlights the fact that the

prohibition against easements on private lots is a Planning Board "policy" not based in law. The Staff Report notes that the Applicant was advised of the Board's opposition to such easements on private lots during the review of the Application, and that it was suggested that the Planning Board has a preference to avoid forest easements on lots, in close proximity to homes. The Applicant obliged and the conflict with the resubdivision "size" criteria has remained an issue, for which the Applicant submitted the waiver request.

The Planning Board determined that there is a practical difficulty created in which two competing factors, one a practice and the other a regulation conflict. By addressing the Planning Board's concerns with forest easements on private lots, the Application cannot comply completely with the Subdivision Regulations. The Planning Board understood that if the affected lots were to "absorb" the corresponding areas of the adjacent HOA parcels, the lots would be of sufficient size to meet the resubdivision criteria and this Subdivision Waiver would not be necessary. However, the Planning Board determined if the lots were enlarged, and the easements were on lot, the proximity of the easement to the rear of the homes would likely create conflicts for future homeowners. The Board supported consideration of the Subdivision Waiver to avoid this situation.

The Planning Board determined that the waiver is the minimum necessary to provide relief from the resubdivision size requirement; that it is not inconsistent with the General Plan, and not adverse to the public interest. The Board determined that the waiver is the minimum necessary to provide relief and that the Application would fully comply with Chapter 50 if the waiver was granted. Further, the Board was satisfied that the house location on each of the two lots would likely remain unchanged whether the waiver is granted or the lot is enlarged. Visually there would be no difference to the general public.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 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; 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 JUL 19 2013 (which is the date that this Resolution is mailed to all parties of record); and

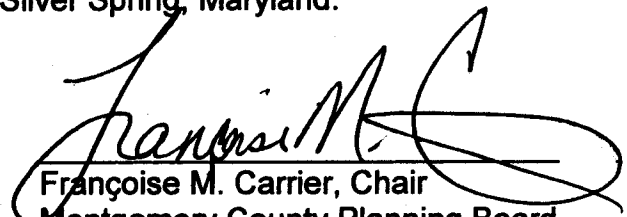
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Vice Chair Wells-Harley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, July 11, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board