



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

MCPB No. 17-068
Site Plan No. 820150020
Burtonsville McDonalds
Date of Hearing: July 20, 2017

AUG 01 2017

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.1 the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on September 15, 2014, McDonald's USA, LLC ("Applicant") filed an application for approval of a site plan to replace an existing McDonald's restaurant and drive-thru with a 4,411-square foot restaurant with a drive thru (dual ordering kiosks) on 2.4 acres of Commercial/Residential Neighborhood ("CRN") zoned-land, located on the south side of Old Columbia Pike (MD 198), approximately 530 feet southwest of the southbound Columbia Pike on-ramp, in Burtonsville, consisting of Parcel P696 on Tax Map KS62 and Parcel "F" (N922) on record plat 13634 ("Property" or "Subject Property"), in the Fairland/White Oak Policy Area and 2012 *Burtonsville Crossroads Neighborhood Plan* ("Neighborhood Plan") area; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820150020, Burtonsville McDonalds ("Site 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 July 10, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 20, 2017, 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

Approved as to

Legal Sufficiency:

8/8/17 Georgia Avenue, Silver Spring, Maryland 20910

MNCPPC Legal Department
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WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820150020 for 4,411-square foot restaurant (eating and drinking establishment) with a drive-thru (dual ordering kiosks) on the Subject Property, subject to the following conditions:¹

Environment

1. Forest Conservation & Tree Save

The Applicant must comply with the conditions of approval for the Preliminary/Final Forest Conservation Plan No. 820150020, approved as part of this Site Plan:

- a. The Applicant must record a Category I Conservation Easement over 0.55 acres of existing forest as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any clearing or grading on the Property.
- b. Mitigation must be provided on the Property for the removal of one variance tree. Mitigation must be provided in the form of planting four native canopy trees with a minimum planting stock size of three caliper inches. The planting locations of these trees and any substitution of species from what is shown on the approved FCP are subject to the approval of the M-NCPPC forest conservation inspector.
- c. The Applicant must complete all tree variance mitigation planting as shown on the approved Forest Conservation Plan within one year or two growing seasons after the development project is complete.
- d. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Forest Conservation Plan.
- e. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
- f. Prior to the start of any demolition, clearing, or grading occurring on the Property, the Applicant must install permanent conservation easement signage along the perimeter of the Category I conservation easement. Signs must be installed a maximum of 100 feet apart with additional

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.

signs installed where the easement changes direction, or as determined by the M-NCPPC forest conservation inspector.

2. Stormwater Management

The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (MCDPS) Water Resources Section in its stormwater management concept letter dated March 24, 2014, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of Site Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.

Public Use Space, Facilities and Amenities

3. Public Use Space, Facilities, and Amenities

- a. The Applicant must provide a minimum of 14,822 square feet of public use space (15.5% of net lot area) on-site.
- b. Before the issuance of use and occupancy certificates for the commercial development, all public use space areas including, but not limited to street lamps, sidewalks benches, outdoor seating, trash receptacles, and bike parking on the Subject Property must be completed.

4. Common Open Space Covenant

The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (Covenant).

5. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to benches, outdoor seating, landscaping, lighting, and bike racks.

Transportation & Circulation/ Adequate Public Facilities (APF)

6. Transportation

- a. The project is limited to one 4,500-square-foot Eating and Drinking Establishment with a bifurcated drive-thru, two drive-thru ordering kiosks and the building's patron area is limited to 1,509-square-feet of patron area with 66 interior seats.
- b. Prior to issuance of building permit, the Applicant must provide M-NCPPC Staff with documentation to showing that the (3,982 square feet) of right-of-

way along the frontage of Parcel P696 has been dedicated to Maryland State Highway Administration (“SHA”), as shown on the Certified Site Plan.

- c. The Planning Board accepts the recommendations of the SHA in its letter dated October 21, 2014, and hereby incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by SHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- d. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by SHA.
- e. Applicant must coordinate with SHA to provide crosswalk striping across the entrance and exit driveways from MD 198, subject to SHA’s standards and requirements

7. Pedestrian & Bicycle Circulation

- a. The Applicant must provide at least two publicly accessible short-term bike spaces and two private bike spaces.
- b. Publicly accessible bike spaces must be inverted-U bike racks or equivalent approved by M-NCPPC Staff and located near the front of the building. The specific location(s) of the public bicycle rack(s) must be identified on the Certified Site Plan.
- c. Private bike storage must be secure, within a bike locker in a well-lit location near the building or a designated secured bike “room” for employees.
- d. Prior to use and occupancy permit the Applicant must provide 10-foot wide asphalt shared use path along Old Columbia Pike in accordance with the *Burtonsville Crossroads Neighborhood Plan*.

8. Validity

The Adequate Public Facility Review (APF) will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution for the Site Plan.

9. Fire and Rescue

The Planning Board accepts the recommendations of the MCDPS Fire Code Enforcement Section in its letter dated February 17, 2017, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Fire Code Enforcement Section provided the amendments do not conflict with other conditions of Site Plan approval.

Site Plan

10. Site Design

- a. The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Certified Site Plan, as determined by M-NCPPC Staff.

11. Lighting

- a. Before Certified Site Plan, the Applicant must provide certification to M-NCPPC Staff from a qualified professional that the lighting plans conform to the Illuminating Engineering Society of North America (IESNA) standards for commercial development.
- b. All onsite down-lights must have full cut-off fixtures.
- c. Deflectors will be installed on all fixtures causing potential glare or excess illumination.
- d. Illumination levels must not exceed 0.5 footcandles (fc) at any property line abutting county roads and residentially zoned properties.
- e. The light pole height must not exceed 21 feet including the mounting base.

12. Site Plan Surety and Maintenance Agreement

Before issuance of the any building permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board. The Agreement must include a performance bond(s) or other form of surety as required by Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance, with the following provisions:

- a. A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b. The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, site furniture, trash enclosures, retaining walls, fences, railings, paths and associated improvements within the relevant phase of development. The surety must be posted before issuance of any building permit within each relevant phase of development and will be tied to the development program.
- c. The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by inspection and potential reduction of the surety.
- d. The bond or surety shall be clearly described within the Site Plan Surety & Maintenance Agreement including all relevant conditions and specific Certified Site Plan sheets.

13. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

14. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the Final Forest Conservation approval letter, stormwater management concept approval letter, development program, and Site Plan resolution on the approval or cover sheet(s).
- b. Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c. Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d. Modify data table to reflect development standards approved by the Planning Board.
- e. Ensure consistency of all details and layout between Site and Landscape Plans.
- f. Add outdoor seating and details to all applicable plan sheets.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Burtonsville McDonalds, Site Plan No. 820150020, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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 Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

This finding does not apply to the Application because the Subject Property is not subject to a Development, Diagrammatic, Schematic Development, or a Project Plan.

2. *The Site Plan meets all of the requirements of the zone in which it is located and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all requirements of the CRN Zone and is not part of an urban renewal plan. The Subject Property is being developed as a McDonald's restaurant (Eating and Drinking establishment) which is a limited use allowed in the CRN Zone, subject to site plan review. Site plan review is also required because the development includes a drive-thru facility, per Section 59-C-15.41(c). Site Plan No. 820150020 was submitted in accordance with the requirements of the CRN Zone, and as stated below, the Application satisfies the limited use standards for the drive-thru use and the general requirements of the CRN Zone.

A. Limited Use

The Subject Property is in the CRN Zone which allows Eating and Drinking establishments as a Limited Use. Since the abutting land to the south (rear) of the Subject Property is zoned R-200, a one-family residential zone, improved with residential development and not a commercial, industrial, utility or any other use, the Application must comply with the limited use requirements of Section 59-C-15.51 in addition to the general requirements for development in the CRN Zone.

Development applications that include Limited Uses must:

- (a) *Satisfy the site plan requirements of 59-D-3;*

The Application satisfies this requirement as outlined in this Resolution.

- (b) *Comply with the design recommendations of the applicable sector of master plan and associated design guidelines;*

As stated below, the Site Plan is substantially consistent with the Approved and Adopted Burtonsville Crossroads Neighborhood Plan and substantially conforms to the design recommendations identified for properties within the Main Street MD 198 South Neighborhood. Separate design guidelines were not developed as part of the Neighborhood Plan.

(c) *Ensure compatible relationships with existing and proposed adjacent residential housing through mitigating factors including, but not limited to:*

1) *Satisfy setbacks;*

As stated below, the building and drive-thru meet the setbacks.

2) *Sound and visual barriers;*

The restaurant operation will not cause any excessive noise, and any noise generated on-site will be significantly diminished by the forest buffer and distance between the Property and the adjoining residences. Based on the building location on the Property and low height of the building, no additional visual barriers area necessary.

3) *Decreased structural heights; or*

As stated below, the building will be no taller than 22 feet, which is below the maximum allowable height of 45 feet.

4) *Diminished site lighting*

The Applicant submitted a photometric analysis verifying that zero footcandles of the light will cross the rear Property line.

B. General Requirements

Section 59-C-15.6 of the Zoning Ordinance provides the following requirements for development in the CRN Zone:

a) Development that requires a site plan must be substantially consistent with the applicable master or sector plan and must substantially conform to any design guidelines approved by the Planning Board that implement the applicable plan. (§59-C-15.61)

The Site Plan is substantially consistent with the Approved and Adopted 2012 Burtonsville Crossroads Neighborhood Plan and substantially conforms to the design recommendations identified for properties within the Main Street MD 198 South Neighborhood. Separate design guidelines were not developed as part of the Neighborhood Plan. The Main Street MD 198 South Neighborhood

area supports infill projects and business expansions that include “a varied mix of convenience retail and service uses that support the local market, street oriented retail and gathering spaces.”

Improving the visual character and perception of Burtonsville was a design goal in the Neighborhood Plan. The Plan seeks to improve “the design of pedestrian infrastructure, public spaces, signage, automobile access, and gateways.”

The McDonald’s Site Plan meets many of the Neighborhood Plan’s Main Street MD 198 Neighborhood recommendations and desired improvements. The Applicant is constructing the Master Planned 10-foot-wide shared use path connection along the frontage of the Property, the first segment of path to be constructed along MD 198 in the Neighborhood Area.

The Site Plan also includes an entrance feature that improves the pedestrian realm and gives this section of main street character. The improvements include a lead in walkway, directly in front of the restaurant that is framed by a pair of benches and landscaping. The seating area is also flanked on either side by brick knee walls that define the pedestrian connection to the Property. The streetscape, entrance feature, and new building will significantly improve the existing site and appearance of the commercial area.

The Application will also meet their stormwater management goals using micro-biofiltration (environmental site design) along the sides and rear of the parking area.

Neighborhood Plan recommended CRN zoning for the south side of MD 198 because of the “limitation of uses” in the C-2 Zone. CRN zoning provides more flexibility of uses to respond to the local market. The CRN Zone permits the eating and drinking establishment for the Property as a limited use, requiring a site plan. Currently, McDonald’s has an approved special exception on the Property.

In addition to the new flexible zoning, the Master Plan recommended CRN zoning for the McDonald’s property and other properties on the south side of MD 198 because it introduced requirements for “appropriate transitions to protect the adjacent residential neighborhood along Tolson Place.” As recommended in the Neighborhood Plan, the proposed Site Plan retains the forested buffer along the southern edge of the property to protect the residents on

Tolson Place. The building is setback 226 feet from the rear property line adjoining the residential zone and the drive through lanes are setback 150 feet from front the abutting property. In addition, the building will only be 21 feet tall, which will be in scale with the nearby commercial and residential buildings. It is also located such that it will not adversely impact existing or proposed adjacent uses.

In sum, this Site Plan provides many of the elements necessary to realize the 2012 Plan's goal to improve the visual character of Burtonsville by improving street character, improving connections, improving building character, providing a local service for nearby employment centers, providing an adequate residential transition buffer, and meeting current stormwater management requirements.

b) Bicycle parking spaces (§59-C-15.62)

As discussed in the Development Standards section below, and shown in in the data table, adequate public and private bicycle parking will be provided on the site.

c) Vehicular Parking (§§59-C-15.631 -59-C-15.633)

As described below, the Property will provide adequate on-site parking. In accordance with Section 59-C-15.633, and as recommended in the Neighborhood Plan, all parking is located behind the main front wall of the building in the side and rear yards.

d) Drive Thru Facility Design (§59-C-15.634)

a. No part of a drive-through facility, including the stacking area, may be located within 100 feet of a property line shared with one-family or agriculturally zoned land.

As shown on the Site Plan, the drive-thru facility is located 150 feet from the adjacent R-200, residentially zoned land.

b. No drive-through service window, drive aisle or stacking area may be located between the street and the main front wall of the main building.

The drive-thru service windows are located on the east side of the building. There is no drive aisle or stacking area associated with the drive-thru located between the street and the front of the restaurant.

The access lane located in front of the restaurant building is for one-way (counterclockwise) internal circulation purposes only and is not associated with the drive-thru. The Neighborhood Plan identifies that two of the challenges of the area include “conflicts between through and local traffic” and “limited local street networks.” The access lane is necessary to balance the vision of the Neighborhood Plan and a safe and efficient development. To retain the existing forested buffer between the building and residential property, the redevelopment does not include expansion of the building or parking lot into the residential buffer. As a result, vehicular circulation on the site is designed as one way only. The access aisle in front of the building creates a safe circulation pattern for motorists on the site, who may need to circle the building to find parking. Alternatively, patrons would be required to exist the site by making a left turn onto MD 198 and another immediate left to turn back into the site and on MD 198, which could would create an unsafe situation.

c. No drive-through service window, drive aisle, or stacking area may be located between the street and the side wall of the main building on a corner lot unless permanently screened from any street by a 5-foot or higher wall or fence.

This provision is not applicable because the Property is not a corner lot.

e) Landscaping and Lighting (§59-C-15.635)

Landscaping and lighting for the Application will be provided in accordance with the applicable requirements for the CRN Zone, as stated in the Landscaping and Lighting Section below and shown on the Landscape and Lighting Plan.

Requirements of the CRN Zone (Section 59-C-15.7)

Based on the following data table, which sets forth the development standards approved by the Planning Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets the applicable requirements of the CRN Zone.

Data Table

Development Standard	Permitted/Required	Approved & Binding
Building Height (feet)	45 ft. max.	21 ft. 4 inches
Building Setbacks (feet)		
Right-of-Way	10 ft.	68 ft. min.
Rear	30 ft.	75 ft. min.
Side	N/A	N/A
Green Area (% of lot)	10% (6,649 sf)	31.4% (20,890 sf)
Public Use Space	10% (9,586 sf)	15.5% (14,822 sf) *includes improvements in the public ROW
Floor Area Ratio (FAR)		
Total	1.5 FAR	4,411 sf/0.46 FAR
Commercial	1.0 FAR	0.46 FAR
Residential	0.5 FAR	N/A
Building Area (square feet)		4,411 sf
Parking Lot Area Canopy Coverage	12,946 SF	3,363 SF / 25.9 %
Parking Spaces (Patron Area)		
Total	18 min. (4sp/1,000 GFA)	31
Handicap	1	2
Loading	1	1
Bicycle Parking	2 Public 2 Private	9 Public 2 Private

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Buildings and Structures

The approved building is centrally located on the Property, facing Old Columbia Pike. The drive-thru and parking will wrap the sides of the building. The building itself will bring an updated and inviting look to the area which is appropriate for the character envisioned by the Neighborhood Plan. These locations provide easy access to the building from adjoining shared use path and parking. The building orientation and location on the lot is ideal because it maximizes visibility from the road and minimizes visibility from the residential properties and provides an efficient circulation pattern.

The locations of the buildings and structures are adequate and efficient, while meeting the aesthetic concerns of the area, and do not pose any safety concerns on the site.

b. Open Spaces

The public use space and amenities have been influenced by the recommendations contained in the Neighborhood Plan, which are designed to create a "main street" along MD 198. The Application provides significant streetscape improvements along MD 198. A pedestrian "gateway" feature will be constructed directly in front of the restaurant building, adjacent to MD 198. To define this gateway feature, the Applicant proposes to install brick retaining walls that will flank the sidewalk on either side, creating the feel of a street wall for pedestrians while allowing for the drive-thru restaurant use. This area will also include bench seating to invite pedestrian use. A 10-foot-wide shared use path for cyclists and pedestrians will be constructed along the south side of MD 198 to connect into the gateway feature improvements. The Application is required to provide public use space equivalent to 10% (9,586 sf) of net tract area public use space. Between the improvements on-site and in the right-of-way, the Application includes 15.5% (14,822 sf) public use space.

c. Landscaping and Lighting

The Application includes a variety of new landscaping and lighting throughout the Property. Street trees are provided along MD 198 to enhance the pedestrian environment and create an aesthetically pleasing presence on

road. New pole mounted lights, sconces, and accent lighting will allow enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties.

The Applicant will be planting a variety of native shade trees such as Maples, Oaks, and Lindens. The shade trees will be planted around the perimeter of the parking lot, in two islands and between building service area and ordering kiosks. The trees will shade 25.9 % (3,363 sf) of the 12,946-square foot parking lot and create depth in the landscape. Shrubs and ground cover, including Laurels, English Yews, and Viburnum will also be planted along the perimeter of the parking area, and along the front entrance of the building. These plantings will help block vehicle headlight glare on the adjacent properties.

d. Recreation Facilities

This Application is not subject to the Recreation Guidelines as it is not a residential development. However, benches and bicycle facilities are provided.

e. Vehicular and Pedestrian Circulation

Pedestrian access and circulation is safe, adequate and efficient. The current vehicular access to the restaurant is from two in/out access points on MD 198, including one right-in, right-out access point. The Site Plan continues to provide access to the Property by two access points located along MD 198, however the western-most access point is now an enter-only entrance that leads to parking and the drive-thru lane and the east access point is now exit only, with a right lane and a left lane.

As part of the project, the Applicant will also reconfigure the existing drive-thru lane and establish a new side-by-side drive-thru. The project also moves the building to the center of the Property and consolidates the parking into a line of parking on either side of the proposed building. Within the site, traffic circulates in a one-way, counterclockwise direction, which minimizes possible pedestrian vehicular conflicts; The intended vehicular circulation pattern is clearly defined using directional pavement markings and signage. For the benefit of drivers and pedestrians, pedestrian crossings in the parking lot crosswalks will be clearly marked. The drive-through bifurcation creates increased area for patron vehicle stacking, which mitigates potential vehicle back-up onto MD 198.

Unlike the existing site, the proposed layout incorporates a drive-through bypass aisle that improves site circulation. The Site Plan also redistributes parking on either side of the restaurant, instead of clustering the parking on one side.

The Site Plan shows a lead-in sidewalk from the 10-foot path to the door of the building and a designated pedestrian crossing across the drive-thru lane from the eastern parking area to the building, as well crosswalk leading from the ADA parking spots to the western building entrance. The pedestrian crossing area throughout the site will provide a clear path for pedestrians to enter the building from the path and surrounding parking lot.

The building location and parking and drive-thru reconfigurations will improve vehicular circulation on the Property and create safer, more controlled site conditions.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

As illustrated in the Limited Use findings, the development is compatible with the adjacent residential uses and is compatible in scale with the adjoining commercial developments. There are no pending developments immediately adjacent or adjoining the Subject Property.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

A. Forest Conservation

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Forest Conservation Plan was submitted with the Site Plan. The net tract area for forest conservation includes the 2.29-acre Property and 0.14 acres of off-site improvements, for a total of 2.43 acres. The Application proposes to remove

approximately 0.25 acres of the 0.80 acres of forest on-site for necessary grading and construction of stormwater management facilities. The Applicant will satisfy the forest conservation requirements by retaining 0.55 acres of existing forest on-site within a Category I Conservation Easement. The Application does not result in a forest planting requirement.

B. Forest Conservation Variance

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

This Application will require the removal of two Protected Trees as identified in the Staff Report. In accordance with 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. As described in the staff report, without the Variance, the Property could not be developed in a manner consistent with the Master Plan and the CRN Zone.

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

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

Granting the variance will not confer a special privilege on the Applicant. The Protected Trees are located within the developable area of the Property, including the right-of-way. The Protected Trees will be removed to allow construction of a shared use path as recommended by the Master Plan and to provide required stormwater management for the Property. Any development considered for this Property would be faced with the same considerations. Granting a variance request to allow land disturbance within the developable portion of the Property is not unique to this 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested

variance is based upon existing Property conditions, the location of the Protected Trees within the developable area of the Property, including the right-of-way, recommendations of the Master Plan, and requirements of the Zone.

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

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

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer, wetland, or Special Protection Area will be impacted or removed as part of this Application. In addition, the MCDPS has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated March 24, 2014. The stormwater management concept incorporates Environmental Site Design (ESD) standards. Additionally, the planting of 12 caliper inches of new trees on the Property will also provide modest water quality benefits.

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

C. Chapter 19 Stormwater Management

The MCDPS Water Resources Section approved the stormwater management concept for the project on March 24, 2014 which includes using multiple micro-bio-retention facilities to meet the required stormwater management goals.

6. *Public facilities will be adequate to support and service the area of the Site Plan.*

Local Area Transportation Review (LATR)

The existing fast-food restaurant with a drive-thru aisle is proposed to be replaced with a modernized restaurant with a smaller patron area. The restaurant will not generate any new weekday peak-hour vehicular trips 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.). Even though the existing restaurant generates 30 or more existing peak-hour trips during the weekday morning and evening peak periods, a traffic study will not be required to satisfy the LATR test because no additional new peak-hour trips would be generated by the proposed modernized restaurant.

Transportation Policy Area Review

Having filed the Site Plan application prior to January 1, 2017, the Applicant must satisfy the transportation Adequate Public Facility's (APF's) Transportation Policy Area Review (TPAR) test under the 2012-2016 Subdivision Staging Policy. Under this test both the roadway and transit tests are inadequate, and the Applicant would have been required to make a TPAR mitigation payment equal to 50 percent of the General District Transportation Impact Tax. However, since the building permit will be filed after March 1, 2017, the Applicant will be required to pay the updated General District Transportation Impact Tax in lieu of the TPAR payment. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.

Roadways and Bikeways

According to the 2012 Burtonsville Crossroads Neighborhood Plan, MD 198 between Old Columbia Pike and Business 29 is designated as a four-lane divided Major Highway, M-76, with a recommended right-of-way of 120 feet, and a Dual Bikeway, DB-48 consisting of a shared use path along the south side of MD 198. Current SHA policy also dictates bike lanes be provided on-road. The existing right-of-way between the roadway centerline and MD 198 property frontage varies between approximately 28 and 60 feet wide but dedication will insure the full 60 feet from centerline across the entire frontage.

The Applicant will construct a 10-foot wide shared use path as part of the Site Plan and is not required to implement the planned bike lanes at this time. SHA is also working on a future potential 2-way inter-parcel connection in the future which is intended to provide a means of vehicular access between the commercial

properties south of MD 198, without having to get on MD 198. The most likely configuration is reflected on the Site Plan.

Other Public Facilities and Services

The Application has been reviewed by the MCDPS, Fire Code Enforcement Section, which determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated February 17, 2017.

The new structure will be served by public (community) water and sewer, which is consistent with the category designations for the Property. Other public facilities and services are currently operating within the standards set by the 2012-2016 Subdivision Staging Policy.

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

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 AUG 01 2017 (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 Cichy, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, July 20, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board