



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

MCPB No. 18-076
Preliminary Plan No. 120180110
Avalon Residential
Date of Hearing: July 19, 2018

SEP 25 2018

RESOLUTION

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

WHEREAS, on January 17, 2018, 3 Sons Avalon ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 50 lots on 10.28 acres of land in the TF-5 zone, located approximately 600 feet north of the intersection of Frederick Road (MD 355) and Shawnee Lane ("Property" or "Subject Property"), in the Clarksburg Policy Area and 1994 Clarksburg Master Plan & Hyattstown Special Study Area ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120180110, Avalon Residential ("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 July 6, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 19, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 19, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor, and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120180110 to create fifty (50) lots on the Subject Property, subject to the following conditions:¹

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.

1. This Preliminary Plan is limited to 50 lots for 16 single-family attached and 34 single-family detached dwelling units, including a minimum of 15% MPDUs, with the final number of MPDUs to be determined at site plan.
 2. The Applicant must obtain Planning Board approval of a Final Water Quality Plan in substantial conformance with the Preliminary Water Quality Plan and the binding elements of County Council Resolution No. 18-739.
 3. The Applicant must comply with the following conditions for Preliminary Forest Conservation Plan No. 120180110, approved as part of this Preliminary Plan, including:
 - a. The Applicant must record a Category I Conservation Easement over all areas of forest planting as specified on the Final 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 and the Liber/Folio for the easement must be referenced on the record plat.
 - b. Prior to the start of any clearing or grading on the Property, the Applicant must record a Certificate of Compliance for an offsite forest mitigation bank within the Clarksburg Special Protection Area or, at a minimum, within the Great Seneca Creek watershed, if possible, for any amount of required forest planting that cannot be met onsite. Offsite requirements may be met by purchasing from a mitigation bank elsewhere in the County if forest is unavailable for purchase within the Great Seneca Creek watershed.
 4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 5, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 5. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letters dated May 23, 2018 and June 26, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letters, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
 6. Prior to Certified Preliminary Plan, the Applicant must revise the Preliminary Plan and all related plan drawings to show the left turn lane on Frederick Road as required by MDSHA.
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7. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its Preliminary Water Quality Plan and Stormwater Management Concept letter dated June 9, 2018, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. The Planning Board accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated April 5, 2018, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
10. The Applicant must dedicate and show on the record plat(s) the following dedications:
 - a. Sixty (60) feet from the existing pavement centerline along the Subject Property frontage for Frederick Road (MD 355).
11. The Applicant must dedicate and construct all road rights-of-way to the full width designated on the Preliminary Plan (fifty (50) feet of total right-of-way for Road ‘A’). Road ‘A’ must include a 5-foot wide sidewalk on one side of the street and be constructed per the details designated in the Preliminary Plan.
12. Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Frederick Road.
13. The Applicant must provide Private Road ‘B’, including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems, and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the “Private Road”), subject to the following conditions:
 - a. The record plat must show the Private Road in a separate parcel.
 - b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at §50-4.3.E et seq.
 - c. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a

professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and structural cross-section specifications of a tertiary road (MC-2001.01) as required by the Montgomery County Road Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

14. The Applicant must provide Private Alleys 'A' and 'B', including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems, and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated area (collectively, the "Private Alleys"), subject to the following conditions:
 - a. The Private Alleys must be shown on their own parcels on the record plat and built to the structural standards of a public tertiary road standard (MC-2001.01) as required by the Montgomery County Road Code. Prior to issuance of building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Alleys have been designed and the applicable permits will provide for construction in accordance with the structural standards noted above (MC-2001.01) and the cross-section specifications included on the plans.
 - b. The record plat must reflect common ingress/egress and utility easements over all alleys.
15. Prior to record plat, the Applicant must record in the Land Records of Montgomery County a covenant to dedicate the outlot shown on the Preliminary Plan for use as a future inter-parcel road, bike, pedestrian, and infrastructure connection to Parcel P660 to the north of the Subject Property for public use, if such a connection is required by the Planning Board in its review of the future redevelopment of Parcel P660. The covenant must be in a form approved by MCDOT and the M-NCPPC Office of the General Counsel.
16. The Applicant must provide a pedestrian connection through open space parcel 'F' as shown on the Certified Preliminary Plan between Frederick Road and Private Road 'B.'
17. The record plat must show necessary easements.
18. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.

19. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
20. The Applicant must comply with binding elements of County Council Resolution No. 18-739 approving Local Map Amendment H-115.
21. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Resolution.
22. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.
23. At the time of site plan submittal, the Applicant must provide a noise analysis for exterior and interior noise levels prepared by an engineer specializing in acoustics to show that noise levels conform to the 1983 *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*. Any private outdoor space found to be in excess of the applicable noise standard may require attenuation measures to be shown on the site plan.
24. No clearing or grading of the site or recording of plats prior to certified site plan approval.
25. Final approval of the number and location of dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined at site plan.
26. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot or right-of-way configuration, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.

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

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its*

location and the type of development or use contemplated and the applicable requirements of Chapter 59.

The Preliminary Plan includes one new public road, one new private road, and two alleys. All blocks created by new and existing roads are appropriately designed for the development. The lots were reviewed for compliance with the development standards for the TF-5 Zone as specified in the Zoning Ordinance and the dimensional requirements of the TLD Zone and the Floating Zone Plan. The lots will meet the dimensional requirements for density, area, frontage, width, and setbacks, and are appropriately shaped and oriented for the houses shown on the plan drawing.

The Preliminary Plan also includes several opens space parcels, including two that each provide more than the minimum required common open space area. One of the open space parcels will be planted with forest to provide screening for an adjacent neighborhood, and the other open space parcel will serve as common open space for the development.

Therefore, the Planning Board finds that the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.

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

The Subject Property falls within the 1994 *Clarksburg Master Plan and Hyattstown Special Study Area* ("Master Plan"). The Master Plan does not make specific recommendations for the Subject Property, but it makes general land use and zoning recommendations for the Transit Corridor District, the area in which the Subject Property is located. The Application meets the objective of continuing the residential character along MD 355 that was present in 1994 when the Master Plan was approved. As stated in the Master Plan, the Transit Corridor District "includes properties fronting MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the 'Up-County': single-family detached lots fronting the road. The most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355." Preliminary plans do not determine the orientation of houses, so the necessary treatments for the units with their side lot lines along MD 355 will be reviewed and analyzed during site plan review to ensure these units face or appear to face MD 355.

Other relevant Master Plan objectives are the recommended residential density of between 2 and 4 units per acre, the implementation of a "greenway" (a series of bike and pedestrian connections throughout the area), and the diversification of

housing types through a recommended mix of 5-20% multifamily, 30-40% attached houses, and 50-60% detached houses.

The Preliminary Plan meets the other Master Plan objectives as follows:

- The base density of 4.0 dwelling units per acre is within the range recommended by the Master Plan. The approved density of 4.87 dwelling units per acre is based on the MPDU bonus, which the Master Plan indicates should be in addition to the base density.
- The Applicant will provide a sidewalk along Frederick Road to support a future pedestrian and bicycle connection to the other trails in the area.
- The Application helps further the goal of a diversified housing mix in the MD 355 Area of the District Transit Corridor District. There are very few other attached houses within the MD 355 Area; the Preliminary Plan will add an additional 16 townhomes.

The Preliminary Plan substantially conforms to the recommendations of the Master Plan.

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

Transportation

The Subject Property has frontage on one public road (MD 355). The Application includes a network of public and private streets and alleys to serve the interior of the project.

Design Exceptions

The Applicant is providing a modified public secondary residential street that loops from the southern end of the property at the south access point to the northern end of the property at the north access point (Public Road 'A'). The Applicant has requested several design exceptions to Public Road 'A', including:

- Narrower right-of-way (50 feet instead of the standard 60 feet);
- A narrower travel lane (10 feet instead of the standard 11.5 feet for one of the two lanes); and
- A sidewalk on only one side of the road instead of on both sides.

Section 50.4.2.E.2.a.i of the Subdivision Code "allows the Planning Board to approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration." The Planning Board must consider the recommendations of MCDOT or other review agencies, the amount of traffic expected, the maximum road right-of-way required, and the increased

traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road. MCDOT recommended approval to the requested design exceptions. The Planning Board agrees with MCDOT's recommendations that the narrower right-of-way is environmentally preferable since it reduces site imperviousness and the reduced right-of-way allows for better use of the tract under consideration. The modified design standard can adequately accommodate the expected amount of traffic on the road.

MCDOT approved the reduced paving section and the provision of the sidewalk on only one side of the road.

The Preliminary Plan also shows a 100-foot centerline radius at the two turns in the loop road. The minimum centerline radius allowed on a secondary road is 150 feet. According to Section 49.32.a:

“If the Planning Board, in approving a subdivision or site plan, finds that a waiver from any applicable design standard is necessary to promote context-sensitive design of a specific road, the Executive or the Executive's designee must adopt the Board's recommendation unless the Executive or the Executive's designee notifies the Board why approving the waiver would significantly impair public safety.”

The Applicant had originally proposed roads using a tertiary street standard, which allows a 100-foot centerline radius, but changed their request to a secondary street standard at the request of MCDOT because no tertiary street standards include parking. The Planning Board finds that the reduced centerline radius helps achieve a better lot layout and can provide additional traffic calming and recommends approval of the reduced radius.

Private Roads

The Applicant is providing a private road that will parallel MD 355 and provide access to the six houses fronting Frederick Road and the internal alleys that provide access to the townhouses (Private Road 'B'). Per section 50.4.3.E.4.b of the Subdivision Code, an applicant must provide a list of proposed design elements that do not meet public road standards and justify why those design elements are necessary for the proposed development. The Applicant has requested the following revisions to the public road design elements:

- Reduced right-of-way width (32 feet instead of 44 feet);
- Revised cross slope (graded at a cross slope of 3% with no crown); and
- A sidewalk on only one side of the road instead of on both sides.

The *Environmental Guidelines* recommend several methods to reduce impervious area, including narrower streets and providing sidewalks only on one side of the

street. The reduced right-of-way width and provision of sidewalks on only one side of Private Road 'B' reduce impervious area by reducing driveway lengths and eliminating sidewalks on one side and allow for more area of the Subject Property to be dedicated to open space, green area, and stormwater management. The revised cross slope better accommodates stormwater flow within the site based on necessary grading of the overall Property.

The sidewalk along Private Road 'B' also creates a pedestrian loop with Public Road 'A' within the development. The roadway will be built to MCDOT standards and construction specifications with respect to surface depths, structural design, alignments, intersection spacing, driveway locations, parking, lighting, landscaping, utilities, and turning radii. Furthermore, Private Road 'B' will not be discernable to the public as different from the public road that it connects to and will function properly for safe vehicular and pedestrian traffic and emergency access.

The Applicant will also provide two private alleys off of Private Road 'B' to serve the rear-loaded townhouses.

Sidewalk on One Side Only

The Road Construction Requirements of Chapter 49, Streets and Roads, subsection 33.e.1.C requires, for lots fronting on a public road, that the Applicant install sidewalks, master-planned bikeways, ramps, curbs, and gutters, except any sidewalk in an environmentally sensitive area with limits on the amounts of impervious surface allowed, if the Planning Board finds that a sidewalk is unnecessary for pedestrian movement.

The Applicant is installing all required items but will only build sidewalks on one side of Public Road 'A' as a way of reducing imperviousness. The Subject Property is in an SPA, an environmentally sensitive area, and therefore the Planning Board must find that the sidewalk is unnecessary for pedestrian movement. The Planning Board finds that having a sidewalk on both sides of the street is unnecessary for pedestrian movement since having only one sidewalk along the roads still provides a walking loop for residents of the neighborhood and a convenient pedestrian connection to Frederick Road, and there are currently no external pedestrian connections to bring additional sidewalk users from outside the development.

Curbs and Gutters

Subsection 33.1.1.A of Chapter 49 prohibits the installation of any curb or gutter in any portion of a road that is in an environmentally sensitive watershed area. However, subsection 33.1.2 permits the Director of Permitting Services to allow a person to install curbs and gutters in a portion of a road located in an

environmentally sensitive area after giving the Planning Board a reasonable opportunity to comment, if:

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

The Applicant will construct curbs and gutters along the roads and alleys shown on the Preliminary Plan. The Applicant has obtained approval for a Preliminary Water Quality Plan, which includes curbs and gutters on the streets. The approval of the PWQP indicates that the water quality is still adequate with the curbs and gutters and will not significantly degrade water quality in the area. Curbs and gutters provide vertical separation between pedestrians and vehicles, and with the addition of a tree panel and street trees, provide the necessary safety in the pedestrian realm for this project. Furthermore, the closed-section road allows for shortened driveway lengths to reduce imperviousness when compared to an open section road. And even though the Applicant will provide curbs and gutters, a good portion of the development includes bioswales behind the curb (fed by curb cuts) and the remainder is treated by micro bioretention measures (fed by curb cuts), thereby meeting the intent of the requirement for an open section road. The Planning Board finds that the use of curbs and gutters shown on the Preliminary Plan will not significantly degrade water quality in the area, helps create a safer environment for pedestrians, and meets the intent of the requirement for an open section road in an environmentally sensitive area by providing bioswales and micro bioretention areas behind the curbs. The Planning Board agrees with MCDOT's recommendation to approve the use of curbs and gutters.

Frontage Improvements

The Applicant, in coordination with the Maryland State Highway Administration ("MDSHA"), will provide the required access improvements to MD 355 to enable safe movements in and out of the Subject Property. The Preliminary Plan is providing the necessary dedication to provide 60 feet from the centerline of Frederick Road across the entire Subject Property frontage and is also providing a five-foot wide sidewalk along the full frontage. The Applicant is required to provide shoulder improvements prior to and after each access point in lieu of full or partial acceleration/deceleration lanes and must provide a left turn lane for southbound MD 355 at the Subject Property's southern access point. The Planning Board supports the findings of MDSHA. As a condition of approval, the Applicant

must revise all necessary drawings to reflect the required left-turn lane prior to Certified Preliminary Plan.

Connection to Parcel P660

As conditioned in this Resolution, the Applicant must record a covenant in the Montgomery County Land Records to dedicate the outlot shown on the Preliminary Plan for a future inter-parcel road, bike, pedestrian, and infrastructure connection to Parcel P660 for the benefit of the public, if such a connection is required by the Planning Board in its review of the future redevelopment of Parcel P660.

Parcel P660 is located to the northwest of the Subject Property. Currently developed with a single-family house but with the potential to redevelop at a similar density to the Subject Property, the Parcel's sole access to Frederick Road is through a narrow pipestem that abuts the Subject Property. When the Subject Property develops as envisioned in the Preliminary Plan, a right-in, right-out access point will be located very near Parcel P660's pipestem. This proximity could result in an unsafe condition on Frederick Road if Parcel 660 is redeveloped at a higher density. Providing a public inter-parcel connection through the Subject Property to Parcel P660 ensures that Frederick Road will remain adequate to serve the Subject Property, even if Parcel P660 redevelops.

Requiring the inter-parcel connection is also consistent with the Technical Review standards in Chapter 50 of the Montgomery County Code. Under Section 50-4.3.E.1.c, "[a] tract in a preliminary plan application must be divided to not preclude future road openings and further logical subdivision of adjacent land." Approval of this Preliminary Plan as conditioned provides for the possibility of a logical future road opening between the Subject Property and Parcel P660. It also helps prevent a scenario in which Parcel P660 could not be subdivided consistent with surrounding development for lack of safe access to Frederick Road.

The provision of a logical network of public roads is an integral part of the subdivision process in Montgomery County. The Montgomery County Code expressly requires the Planning Board, in approving subdivisions, to consider the possible future subdivision of adjacent lands. In this case, an inter-parcel connection will ensure that if Parcel P660 is subdivided for more intense development, Frederick Road will remain adequate to safely serve the Subject Property *and* Parcel P660. There is a clear nexus between the impacts of the subject Application on the public road network and the requirement to place a covenant on the outlot as required by Condition 15 of this resolution, and the Board concludes that Condition 15 is appropriate and necessary for the approval of this subdivision.

Local Area Transportation Review

The Preliminary Plan was reviewed using the 2016-2020 Subdivision Staging Policy and associated 2017 Local Area Transportation Review (LATR) Guidelines. The project would generate 51-person trips during the AM weekday peak period and 65-person trips during the PM weekday peak period based on the *ITE Trip Generation Manual*, 9th Edition and adjusted for the Clarksburg policy area. Because the project generated 50 or more person trips, a full traffic study was required to satisfy the LATR Guidelines. The project would not generate enough transit, bicycle, or pedestrian person trips to require additional analysis for any of those transportation modes.

None of the critical intersections would have a Critical Lane Volume (CLV) standard that exceeds the policy area standard under the future traffic condition. In addition, a Highway Capacity Manual (HCM) delay-based level of service analysis for the intersection of MD 355 and MD 121/Stringtown Road was performed because the intersection is located in an orange policy area that requires this level of analysis (Clarksburg Town Center). This intersection would operate under future conditions well below the Clarksburg Town Center policy area delay congestion standard of 63 seconds and also well below the Clarksburg policy area delay congestion standard of 51 seconds. Therefore, since both the CLV and HCM analyses were within acceptable levels, no infrastructure improvements are required to satisfy the LATR guidelines.

Transportation Conclusion

The public road and the private road and alleys are well designed to accommodate the expected amount of vehicular traffic generated by this project. The provision of a sidewalk on only one side of the roads in the subdivision is sufficient for pedestrian circulation. The use of curbs and gutters, in combination with the use of bioswales and micro bioretention facilities, helps reduce impervious surfaces and meets the intent of the general requirement to use open section roads in an environmentally sensitive area. Providing for the possibility of a future inter-parcel connection to Parcel P660 will ensure that Frederick Road will remain adequate to serve the Subject Property and Parcel P660 in the event Parcel P660 redevelops. The Applicant is providing the necessary frontage improvements along MD 355. No infrastructure improvements are required to satisfy the LATR guidelines. The Planning Board finds that the roads and sidewalks shown on the Preliminary Plan are adequate to support and service the area of the subdivision.

School Capacity

The applicable annual school test for the Application is the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. With a net of 34 single family detached and 16 single family attached units, the project is estimated to generate the following number of students: 11 new

elementary school students, 6 new middle school students, and 8 new high school students.

The Subject Property is in the Clarksburg High School Cluster. According to the projected cluster totals for September 2023, there is sufficient capacity at the elementary, middle, and high school cluster levels to accommodate the estimated number of students generated by this project. The applicable elementary and middle schools for this project are Little Bennett ES and Rocky Hill MS, respectively. Based on the FY19 Annual School Test results, the projected enrollment plus the estimated impact of this Application falls below both applicable moratorium thresholds for both Little Bennett ES and Rocky Hill MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this Application.

Other Public Facilities

The Subject Property is in sewer category S-3 and water category W-1 which is consistent with the Applicant's proposal to connect to public water and sewer which are available and adequate to serve the development. A new water line will tie into the existing water line in MD 355 and a new sewer line will outfall through an adjacent property via an easement that has been acquired for this purpose. The new sewer line will traverse this easement to Shawnee Lane and then connect to an existing sewer line near the intersection of Shawnee Lane and Timber Creek Lane. The existing electrical service provided by Potomac Edison will be upgraded to serve the development.

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

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

The Planning Board finds that the existing and proposed public facilities will be adequate to support and service the area of the subdivision.

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

A. Forest Conservation

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

As required by the County Forest Conservation Law, a Preliminary Forest Conservation Plan (PFCP) for the project was submitted with the Preliminary Plan. The net tract area for forest conservation purposes is 11.69 acres. The Applicant is removing the two acres of onsite existing forest, which generates a planting requirement of four acres. Mitigation will take place with 1.44 acres of onsite planting, 0.80 acres of onsite landscape credit and 1.76 acres of off-site mitigation. Offsite mitigation should take place within the Clarksburg Special Protection Area, or at a minimum, within the Seneca Creek watershed, although offsite requirements may be met by purchasing from a mitigation bank elsewhere in the County if forest is unavailable for purchase within the Great Seneca Creek watershed.

B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to one Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Protected Tree at issue in this case is on adjacent Lot 2 of Clarkbrooke Estates. The only way that sewer can be extended to the Subject Property is from the south, via an easement across Lot 3 next to Lot 2. The limits of disturbance for the sewer line and a manhole will be constructed within 8 feet of the tree. This will impact at least 37% of the tree's CRZ. Avoiding impacts to the CRZ of the Protected Tree will make it impossible for sewer to be extended to the Subject Property.

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

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

The Subject Property drops in elevation from north to south, and connection to gravity sewer must be to the south within the Shawnee Lane right of way. The development avoids impacts to all but one specimen tree, which is located offsite, but in close proximity to the location of the sewer connection needed to serve the site. Therefore, this is not a special privilege to be conferred on 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 requested variance is based on the on- and off-site conditions and the location of the existing sewer infrastructure and sewer easement. This is not a 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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to the need for a variance.

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

The granting of this variance will not adversely affect water quality. The Protected Tree requiring a variance (shown as #398 on the FCP) is not directly adjacent to any streams, or part of a riparian buffer system or within any wetland systems. The Property will be developed using storm water quality and quantity control measures designed for Special Protection Areas.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of the Protected Tree at a ratio of approximately 1 caliper inch per 4 inches diameter at breast height removed. This results in a requirement of 8.75 caliper inches or three 3-inch trees.

The Preliminary Forest Conservation Plan No. 120180110 with conditions meets all applicable section of Chapter 22A of the Montgomery County Code.

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

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

The Subject Property is within the Little Seneca Creek watershed and drains to an unnamed tributary (LSLS302) to Little Seneca Creek across MD 355 from the property. Subwatershed LSLS302 currently has an imperviousness level of 23.5%. This project is within the Clarksburg SPA and is the subject of a preliminary plan of subdivision, and therefore is required to obtain approval of a water quality plan under section 19-67 of the Montgomery County Code, which also includes a stormwater management concept plan.

Under the provision of the law, the Montgomery County Department of Permitting Services and the Planning Board have different responsibilities in the review of a water quality plan.

County DPS Special Protection Area Review Elements

MCDPS has reviewed the elements of the SPA Preliminary Water Quality Plan under its purview. The Preliminary Water Quality Plan was approved by DPS on June 9, 2018. MCDPS requested more information for the Final Water Quality Plan.

Stormwater Management

DPS will require that full Environmental Site Design be achieved to meet the goals. The Applicant's current plan relies heavily on micro-bioretenion cells to meet requirements. They will also connect along MD 355 to an existing stormwater management drainage system.

Sediment and Erosion Control

Redundant sediment control structures will also be required such as oversized traps, super silt fence for small drainage areas and phasing to promote quick stabilization.

Monitoring of Best Management Practices

BMP monitoring will be done by Montgomery County Department of Environmental Protection (MCDEP) with fee money from the Applicant. The law that established the monitoring requirement was put into place in June of 2013. Previously a program and protocols would be specified by the County but operated by the Applicant. One year of pre-construction monitoring must be completed prior to the issuance of a sediment control permit.

Planning Board Special Protection Area Review Elements

The Planning Board's responsibility is to determine if environmental guidelines and forest conservation requirements have been satisfied. In addition, the Board must review the appropriateness of the proposed impervious level of the new development.

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420170780) was approved by Planning Staff on June 28, 2017. The Subject Property is located within the Clarksburg SPA and the Clarksburg Tributary of Little Seneca Creek watershed, a Use Class IV-P watershed. County Stream Monitoring in 2014 rated this watershed as "Fair" in water quality. This is a decline from the "Good to Excellent" water quality reported in 1998.

There are no streams, wetlands, or floodplains on or near the site, so there are no encroachments to sensitive areas. The plan meets the requirements of the *Environmental Guidelines* for sensitive area protection.

Imperviousness

A main goal for new development in all SPAs is to reduce the area of impervious surfaces. The Clarksburg SPA, which was created following approval of the Clarksburg Master Plan and subsequently amended, specifies no maximum imperviousness cap in this portion of the SPA. However, during the rezoning process the District Council created the following binding element:

"To minimize impervious surfaces on the property, development of the property should pursue an imperviousness goal of 35 percent or less of the tract area as calculated using the Environmental Guidelines."

With this goal in mind, Staff worked with the Applicant to minimize the imperviousness of the site development design. The imperviousness level was shown as 36.1% for the Application, which includes shoulder improvements to MD 355 to facilitate site access. This will bring the LSLS302 subwatershed of Little Seneca Creek to an impervious level to 24.1%, which is approaching an impervious level that typically supports only poor water quality. The late addition of the required left turn lane, which will be reviewed further with the site plan, will bring the impervious level to over 36.5%. Staff will investigate other means to minimize imperviousness at the time of site plan.

Although the Planning Board is concerned that imperviousness has exceeded 35 percent, the Board finds that the current level of imperviousness resulting from the development is acceptable because the onsite improvements are comparable with those shown on the approved Floating Zone Plan. The offsite improvements, which are in great part due to SHA's requirements, account for most of the

additional imperviousness over 35%. The imperviousness analysis also includes all possible options (decks, patios, additions) future homeowners could select, even though not all purchasers will select all options. Imperviousness will need to be re-examined at the time of site plan review.

Forest Conservation

The Forest Conservation Plan is one of the review elements of the Water Quality Plan. As expressed above, the Preliminary Forest Conservation Plan meets the requirements of Chapter 22A of the County Code.

In conclusion, Preliminary Water Quality Plan No. 120180110 as conditioned meets all applicable sections of Chapter 19 of the Montgomery County Code.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 25 2018 (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 Patterson, with Commissioners Fani-González, Cichy, and Patterson voting in favor, and Chair Anderson and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, September 20, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board