



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

MCPB No. 19-005  
Preliminary Plan No.11989271C  
**Wildwood Manor Shopping Center**  
Date of Hearing: January 10, 2019

**MAR 22 2019**

**RESOLUTION**

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

WHEREAS, on January 19, 1990, the Planning Board approved Preliminary Plan No. 119892710, to create one lot and a maximum of 34,580 square feet for a medical office complex, on approximately 3.5 acres of land in the C-1 Zone, located in the southeast quadrant of the intersection of Old Georgetown Road (MD 187) and Rock Spring Drive, in the North Bethesda/Garrett Park Master Plan area; and

WHEREAS, on February 5, 2009, the Planning Board approved Preliminary Plan No. 11989271A, by Resolution No. 09-11, to allow a maximum of 69,893 square feet of development for the existing approximately 36,423 square-foot medical office building, a new 30,000 square-foot office building, and a 3,470 square-foot drive-thru bank and parking structure in the O-M Zone; and

WHEREAS, on March 18, 2013, Wildwood Medical Center, LLC (“Applicant”) filed an application which was designated Preliminary Plan No. 11989271B, Wildwood Manor Shopping Center for implementation of the residential building approved under Schematic Development Plan Amendment 12-1 by the Montgomery County Council and Special Exception S-2830 by the Montgomery County Board of Appeals, was subsequently withdrawn on November 26, 2014 by default because the application was inactive; and

WHEREAS, on April 5, 2018, Alvin L. Aubinoe, Inc (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create two lots and one private road parcel for up to 139,5000 square feet of development, including up to 95,000 square feet for sixty (60)-units of multi-family residential uses (age-restricted by covenant) with a minimum 15% MPDUs and up to 11,000 square feet of ground-floor retail uses with below-grade parking, in addition to an existing 3,500-square-foot bank and an existing 30,000-square foot medical office, on approximately 3.49 acres of land in the CRT-1.25 C-0.5, R-0.75, H-50 Zone, currently

Approved as to  
Legal Sufficiency:

*Matt Mills/cs*  
MNCPPC Legal Department  
www.MCParkandPlanning.org

8787 Georgia Avenue, N.W., Washington, D.C. 20010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

located at 10401 Old Georgetown Road (“Subject Property”), in the North Bethesda Policy Area and the 2017 Rock Spring Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 11989271C, Wildwood Manor Shopping Center (“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 December 31, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 10, 2019, 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 January 10, 2019, the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzalez, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzales, and Patterson voting in favor and Commissioner Dreyfus absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Preliminary Plan No.11989271C, subject to the following conditions, which supersede all previous conditions of approval:<sup>1</sup>

### **General Approval**

1. This Preliminary Plan is limited to two Lots and one private road parcel for up to 139,500 square feet of development, including up to 95,000-square-feet for sixty (60)-units of multi-family residential uses (age-restricted by covenant) with a minimum 15% MPDUs and up to 11,000 square feet of ground-floor retail uses with below-grade parking, in addition to an existing 3,500-square-foot bank and an existing 30,000-square-foot medical office.
2. Occupancy Provisions Age-Restricted Housing
  - a. All residential units must be Age-Restricted (restricted to persons who are fifty-five (55) years of age or older), as defined by Section 59.1.4.2. of the Zoning Ordinance.
  - b. Prior to Certified Site Plan:

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<sup>1</sup> 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.

- i. The Applicant must enter into a covenant with the Planning Board reflecting the age restriction in a form approved by the M-NCPPC Office of General Counsel;
- ii. The covenant must be recorded in and among the Maryland Department of Land Records of Montgomery County; and
- iii. The Liber Folio reference must be included on the Certified Site Plan.

### **Adequate Public Facilities**

3. 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.

### **Agencies**

4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated May 9, 2018, and 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. Before the issuance of access permits, if any, the Applicant must satisfy the Maryland State Highway Administration’s requirements for access and improvements.
7. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated November 8, 2018, and 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 if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated September 10, 2018, and 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 amendment does not conflict with other conditions of Preliminary Plan approval.

9. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in its letter dated November 1, 2018, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

### **Concurrent Site Plan Approval**

10. Before submitting a record plat application or clearing or grading the Subject Property, the Applicant must receive Staff certification of Site Plan No. 82008024B. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks and bikepaths is determined through site plan review and approval.
11. If a Site Plan for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan Amendment before Certified Site Plan.

### **Forest Conservation**

12. The Applicant must comply with the following conditions of approval of Preliminary Forest Conservation Plan No. 11989271C, approved as part of this Preliminary Plan.
  - a. Before demolition, clearing, or grading on the Subject Property, the Applicant must record a Certificate of Compliance to use an off-site forest mitigation bank easement in the Montgomery County Land Records. The certificate of compliance must be in a form approved by the M-NCPPC Office of the General Counsel.
  - b. A Final Forest Conservation Plan (FFCP) that substantially conforms to the Preliminary Forest Conservation Plan must be approved with the Site Plan.
  - c. Prior to the release of the first Use and Occupancy permit, mitigation must be provided for the removal of seven (7) trees subject to the variance provision that are not included in the forest clearing calculations. Mitigation must be provided in the form of planting native canopy trees totaling 63 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees planted for variance tree mitigation are in addition to the trees planted to satisfy the forest conservation

requirements. The mitigation trees must be planted on the Subject Property, in locations shown on the approved Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.

## **Transportation**

### **Existing Frontage Improvements**

13. The Applicant must provide a five (5)-foot-wide sidewalk along the Property's frontage on Berkshire Drive in accordance with the County's Road Code standards, unless the existing sidewalk is already five (5)-feet-wide.
14. The Applicant must assure that all on-site pedestrian connections are ADA compliant.

### **Private Roads**

15. The Applicant must provide the Private Road identified as "*Private Street F*" on the Preliminary Plan, 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 consistent with Road Code Standard MC-2001.02, as modified.
  - c. 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.

### **Other**

16. Motorized vehicle access from Berkshire Drive is restricted to emergency access only and must be signed as such and built with removable physical barriers.

### **Record Plats**

17. There shall be no clearing or grading of the site prior to Certified Site Plan. The record plat needed to implement this Preliminary Plan approval and create two lots and one private road parcel must be recorded prior to issuance of any Use and Occupancy Certificate for the project.
18. The record plat must show necessary easements.
19. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
20. The record plat must reflect a thirty (30)-foot building restriction line from Berkshire Drive, as shown on the Preliminary Plan.

### **Certified Preliminary Plan**

21. The Applicant must include applicable approval letters and the Preliminary Plan Resolution on the approval sheet(s).
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 issuance 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. Before approval of the Certified Preliminary Plan, the Applicant must make the following revisions and/or provide the following information subject to M-NCPPC Staff or other agency review and approval:
  - a. Modify the data table to reflect development standards approved by the Planning Board.
  - b. Ensure consistency of all details and layout between the Preliminary, the Site Plan, PFCP, and architectural plans subject to M-NCPPC Staff review and approval.
  - c. The Preliminary Plan application drawings should contain a Preliminary Forest Conservation Plan, numbered with the Preliminary Plan number,

and delete the Final Forest Conservation Plan numbered with the Site Plan number.

- d. Add the cross-section of the private street on the Preliminary 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 lots were reviewed for compliance with the dimensional requirements for the CRT-1.25: C-0.5, R-0.75, H-50 Zone, as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in the zone and accommodate the use. However, the proposed development does not meet the ground story, rear (min) 30% transparency requirement, because the Applicant is providing structured parking on this small building and therefore is providing 21% transparency at the ground story, rear elevations, rather than the required 30%. Additionally, the Applicant has oriented the retail and residential uses toward Old Georgetown Road and away from Berkshire Drive as much as possible. Minimizing transparency toward Berkshire Drive is another way the Applicant has attempted to minimize impacts of this development on the existing neighborhood. The Zoning Ordinance allows the Planning Board to approve a lesser minimum at the time of Site Plan, and the Planning Board hereby approves the 21% transparency for the aforementioned reasons.

Private Roads -Section 50.4.3.E.4.

This Application includes establishing the existing north/south driveway, located between the existing medical office building and the existing bank, as a private road in a separate road parcel. In accordance with the requirements of Section 50.4.3.4c., in requesting a private road, the Applicant agrees to the enumerated requirements, per the condition of approval that the private roads must be fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to the minimum corresponding public road standards, except for right-of-way and pavement widths, as modified.

The private road identified as "Private Street F" on the Preliminary Plan will:

- Provide frontage to the mixed-use building;

- Be constructed to the minimum public road standards, except for right-of-way and pavement widths, as modified;
- Provide adequate turning radii where necessary for emergency access;
- Have an appropriate paving cross-section for private vehicles, and an appropriate circulation and turnaround pattern; and
- Be located in a separate private road parcel with a covenant and easement that ensures it is adequately maintained and remains fully accessible to the public.

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

The Property is within the boundaries of the 2017 *Rock Spring Master Plan*. The Master Plan area is largely suburban in character, dominated by auto-oriented employment and retail uses that are surrounded by residential uses. The Master Plan envisioned three districts; the Property is part of the Rock Spring East/Village Center District. This center includes a mix of office, limited residential, educational, service, and retail uses. The Application will introduce residential uses to a Property, which at present houses medical office and service uses. The Master Plan supports the concept of transforming single-use commercial properties into mixed-use by inserting residential components that could support existing commercial uses. The Property is adjacent to an existing residential community; the Master Plan includes specific language on how redevelopment should transition to adjacent single-family homes directly across Berkshire Drive.

The Master Plan included detailed recommendations for this Property. The development adheres to the following Master Plan recommendations:

- Height: Maximum height is 50 feet; 35 feet along the Berkshire Drive frontage.
- Building Setbacks: 30 feet from Berkshire Drive.
- Open Space: 30 feet setback in front of the proposed building along Berkshire Drive, plus 40 feet wide open space only along the Berkshire Drive frontage beyond the building area. Other open space areas are provided within the proposed development.

In addition, the development furthers the following Master Plan goals:

- Creates infill development that introduces housing within a single use commercial property.
- Provides a publicly accessible green space within the Plan area.
- Replaces an existing surface parking lot with mixed-use redevelopment.



- Increases amenity options for businesses and their employees, as well as for new residents.
- Reduces impervious surfaces by creating pervious, green areas.
- Establishes additional pedestrian/bicycle connections that link to existing trails.

The Planning Board finds that the development is in substantial conformance with the setbacks, and height stepback recommendations of the Master Plan. Additionally, the development: introduces housing options on a property that has been historically used solely for non-residential uses; provides publicly accessible green space in the form of Public Open Space, that will be available for use by the existing and future residents; replaces the existing surface parking lot with infill/mixed-use development; increases amenities for businesses, employees, and existing and future residents in the area; reduces impervious surfaces by creating pervious, open space areas with stormwater management facilities not previously required; and by establishing additional and safe pedestrian and bike facilities consistent with the recently adopted 2018 Bike Master Plan. Thus, the Planning Board finds the development in substantial conformance with the recommendations of the 2017 *Rock Spring Master Plan*.

#### *Master Planned Roadways and Bikeways*

In accordance with the 2017 *Rock Spring Master Plan* and the Council adopted 2018 *Bikeway Master Plan*, the master-planned roadway and bikeway designations are as follows:

- Old Georgetown Road is designated as a major highway, M-4, with a recommended 120-foot right-of-way and a Local Bikeway, LB-7, two-way separated bike lanes on the eastern side in the 2017 *Rock Spring Master Plan*.

Berkshire Drive is not listed in the Master Plan and is considered a tertiary residential street with a 50-foot-wide right-of-way.

An overall transportation goal of the 2017 *Rock Spring Master Plan* is, to: “provide guidance for transforming the area from an auto-centric setting to a more transit-oriented environment that is hospitable to both pedestrians and bicyclists.”

The 2018 *Bicycle Master Plan* recommends a Neighborhood Connector on the north side of the Property and two-way separated bike lanes on the east side of Old Georgetown Road along the west side of the Property. The Applicant is providing the east/west Neighborhood Connector with the development, while the two-way separated bike lane along Old Georgetown Road will be required in

the future when development is proposed on the lot along Old Georgetown Road. Although vehicles will primarily access the site via Old Georgetown Road, the area to be occupied by the mixed-use building is 130-feet from Old Georgetown Road with an existing gas station and bank operating in-between. By ensuring the sidewalk on Berkshire Avenue is a minimum of five (5)-feet-wide, providing the east/west Neighborhood Connector on the north side of the Property, and providing acceptable short- and long-term bicycle parking, the Applicant is fulfilling the recommendations of the Bicycle Master Plan.

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

### Transportation

#### *Adequate Public Facilities (APF) Test*

The existing medical office of 36,423 square feet (30,000 square feet for FAR purposes) was originally approved in 1990 and was constructed prior to the following amendments in 2008. In 2008, Preliminary Plan No. 11989271A and Site Plan No. 820080240 were approved for the then existing medical office of 36,423 square feet (30,000 square feet for FAR purposes), a 3,470 square foot bank (Phase I) with three drive-through windows, and a general office building (Phase II) of 30,000 square feet. The bank was constructed; however, the second 30,000 square foot general office building was never built.

Since the existing medical office building was constructed and occupied more than twelve (12) years before the current Local Area Transportation Review (LATR) transportation statement request, the Applicant may take credit for the existing site trips based on the current LATR trip generation methodology. These existing trips are reflected in the transportation study as “background” traffic.

The previous approvals for the existing bank and the unbuilt office generated 71 morning and 81 evening peak-hour vehicular trips. The conversion of the approved but unbuilt office to a 60-unit multi-family residential building and 11,000 square feet of ground floor retail generates 42 morning and 85 evening peak-hour vehicular trips. Therefore, the change in use generates twenty-nine (29) fewer morning and four (4) additional evening peak-hour vehicular trips. Under the current 2016-2020 Subdivision Staging Policy (SSP), the County Council requires that peak-hour person trips be analyzed for the Local Area Transportation Review Test rather than vehicular trips, which was required at the time of the prior approval. Therefore, under the current 2016-2020 SSP, which this Application was reviewed under, a traffic study is required because

the land use change generates more than a total of 50 peak-hours person trips for the existing development and the mixed-use building.

The Highway Capacity Manual (HCM) average vehicle delay standard for the North Bethesda Policy Area is 71 seconds. At the Old Georgetown Road and I-270 Westbound Ramp and the Old Georgetown Road and Rock Spring Park intersections, the delay in the total traffic condition is less than the delay in the background condition. The reason for the reduced delay is that the trips generated by the residential uses are in the non-critical directions compared to previously approved commercial trips.

At the intersection of Old Georgetown Road and Rock Spring Park, the average intersection HCM delay values exceed the congestion standard for the North Bethesda Policy Area (71 seconds per vehicle). However, the conversion of office to residential and retail uses results in a reduction of the delay in the total traffic condition compared to the background traffic condition. Therefore, per the LATR Guidelines, no improvements are required at this intersection.

The Applicant is not required to enter into a Traffic Mitigation Agreement with MCDOT and the Planning Board to participate in the North Bethesda Transportation Management District (TMD) because the Property is located outside the TMD's boundary.

#### *On-Site Parking*

Although the County Ordinance permits reduced parking for the existing medical office building, the parking demand of the existing tenants appears to be higher than a typical medical office. This higher parking demand is accommodated on the Property. Also, the plan is conditioned to clearly designate both public and private residential parking spaces.

#### *Pedestrian Facilities*

The development must provide on-site pedestrian connections that are ADA compliant. The Applicant must provide a five (5)-foot-wide sidewalk along the Berkshire Drive frontage.

#### *Available Transit Service*

Ride On routes 6, 26, and 96 and Metrobus routes J1 and J2 operate on Old Georgetown Road's frontage.

#### Schools Capacity

This Preliminary Plan is subject to the FY2019 Annual School Test. The FY2019 Annual School Test does not apply to this Property, because the proposed age-restricted housing (55 years of age and older) is not subject to the schools APF

review. Any conversion from age-restricted housing to standard multi-family housing in the future will require the conditions of approval of the Preliminary Plan and Site Plan to be amended, the covenant to be extinguished and the schools APF test to be evaluated.

#### Other Public Facilities and Services

The Property will be served by public water and public sewer. This application has been reviewed by the Montgomery County Department of Permitting Services Fire Department Access and Water Supply Comments, which has determined that the Property will have appropriate 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 Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

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

#### Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this site on February 23, 2018. The NRI/FSD documented no streams or their buffers, wetlands or wetland buffers, hydraulically adjacent steep slopes, 100-year floodplains, or known occurrences of rare, threatened, and endangered species. This plan is in compliance with the *Environmental Guidelines*.

##### A. Forest Conservation

The Board finds that as conditioned, the Preliminary Forest Conservation Plan (PFCP) complies with the requirements of the Forest Conservation Law.

There is no forest on the site. The land use, zoning and net tract area yield an afforestation requirement of 0.54 acres of forest planting. The Applicant will provide the afforestation mitigation through purchase of credit in an approved off-site forest bank. The mitigation must equal 0.54 acres of new forest planted or 1.08 acres of existing forest preserved.

##### 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.

The Applicant submitted a variance request on July 31, 2018 because the plan would create an impact to the (CRZ) of ten trees that are considered high priority for retention under Section 22A-12(b) of the County code. Seven of these trees will be removed; the other three will be saved.

#### *Hardship Findings*

This Property is zoned CRT in the recent Approved and Adopted *Rock Spring Master Plan*. In the section of the Master Plan discussing this Property, the Plan notes that, "*The intent of the CRT Zone is to target opportunities for redevelopment of single-use commercial areas and surface parking lots with a mix of uses, while encouraging development that integrates a combination of housing types, mobility options, commercial services, public facilities, and amenities.*" The Master Plan further says of this Property that "*An office building and bank are developed on this site. An approval currently exists for the development of 58 multi-family units south of the existing office building on what is currently a surface parking lot.*" It is clear that the Master Plan and zoning envision the kind of infill development being proposed in this Preliminary Plan and accompanying Site Plan. Because most of the specimen trees on this Property exist within small planting islands within and around the parking lot, this kind of infill development cannot be implemented without impacting these trees that are in the parking lot where new buildings, drive aisles, sidewalks, stormwater management, and amenities are planned. The Planning Board believes that denying the variance would prevent any meaningful infill development from occurring in accordance with the required Master Plan compliance, and this would constitute a hardship for the Applicant. This finding must be met when determining whether a variance can be considered for the project. Based on this finding, the Planning Board finds that a variance can be considered.

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 specimen trees to be removed are in islands within the parking lot or at the parking lot perimeter. Infill development, by definition, adds new buildings within the existing parking lot and developed area of the site. The development is consistent with the Master Plan

recommendations and the zoning. The Planning Board has determined that the impacts to the trees subject to the variance requirement cannot be avoided if the site is to be redeveloped as envisioned and is consistent with the findings of similar variance reviews. Therefore, the Planning Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

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 not based on conditions or circumstances which are the result of actions by the Applicant, but on the approved zoning, Master Plan recommendations, and environmental, engineering and site constraints.

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 requested variance is 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 approval associated with the PFCP approval requires that specimen trees being removed be replaced on-site at a ratio of one inch of replacement tree planting for every four inches diameter removed, using native shade tree planting stock of no less than three inches caliper, each. The Variance approval permits the removal of seven specimen trees totaling 251 inches, diameter. This results in required mitigation equal to 63 caliper-inches of native shade trees, or 21 trees of three inches caliper, each. These trees are shown on the Final Forest Conservation Plan and Landscape Plans as part of the concurrently reviewed Site Plan.

These replacement trees will, in time, replace the lost water quality functions of the trees being removed. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

*County Arborist's Recommendation on the Variance*

In accordance with Montgomery County Code Section 22A-21(c), on September 24, 2018, the Planning Department referred a copy of the variance request to the

County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The Arborist has not provided comments, thus, approval is assumed.

- 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 Applicant received approval of its stormwater management concept from the Montgomery County Department of Permitting Services on November 8, 2018. The concept proposes to meet required stormwater management goals using a combination of ESD approaches including micro bioretention and structural filtration. The Property is not subject to a water quality plan and there are no floodplain requirements. The requirements of Chapter 19 for stormwater management are satisfied.

- 6. Any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.*

There are no other applicable provisions to the Property.

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 MAR 22 2019 (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).

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**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 and Commissioners Fani-González and Cichy voting in favor, and Vice Chair Dreyfuss and Commissioner Patterson absent at its regular meeting held on Thursday, March 7, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board