



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

MCPB No. 19-109  
Preliminary Plan No. 120190040  
Poplar Grove  
Date of Hearing: October 3, 2019

**OCT 30 2019**

**RESOLUTION**

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

WHEREAS, on November 8, 2018, Symmetry at Cloverleaf LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create 176 lots and 45 parcels on 19.4 acres of land in the CR 2.0, C-1.75, R-1.0, H-145T and Germantown Transit Mixed Use Overlay Zone, located on the east side of Century Boulevard between Father Hurley Boulevard and the future Dorsey Mill Road (“Subject Property”), in the Germantown West Policy Area and the 2009 Germantown Employment Area Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120190040, Poplar Grove (“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 September 20, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 3, 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 October 3, 2019 the Planning Board voted to approve the Application, subject to certain conditions, on the motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 3-0; Chair Anderson and Commissioners Cichy and Verma voting in favor, with Commissioners Fani-Gonzalez and Patterson being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120190040 to create 176 lots and 45 parcels on the Subject

Approved as to  
Legal Sufficiency:

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Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to 176 lots and 45 parcels including parcels for roads, open spaces and future development, for up to 1,206,000 square feet of mixed-use development, including up to 176 townhomes, 365 multi-family residential dwellings and 520,000 square feet of non-residential.
2. The Preliminary Plan will remain valid for up to 144 months (12 years) from the date of the mailing of this resolution. The Phases may occur in any order. The Applicant must meet at least one of the following four development triggers every three years (36 months) for the Preliminary Plan to remain valid:
  - a. Record plats for at least 70 lots for 70 townhouse units (Phase IA).
  - b. Record plats for 106 additional (176 total) townhouse units (Phase IB).
  - c. Record plats for parcels E4, E6, F2, And G2 in the Maker and Multi-Family District (Phase II).
  - d. Record plats for parcels A1 – A4 in the Mixed-Use Transit Oriented District (Phase III).
3. Peak hour trips shall be calculated based on each development type allowed by the Preliminary Plan, using the trip generation rates from 2013 LATR Guidelines, based on the density at full build-out and including allowed deductions, consistent with the Provisional Adequate Public Facilities methodology used in Resolution No. 15-149.
4. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for one hundred eighty-six (186) months from the date of mailing of this Planning Board Resolution, including the 12-year extension granted as part of this Preliminary Plan. The Applicant must comply with the following cumulative development triggers for the APF to remain valid:
  - a. Within five years (60 months) from the date of the mailing of this resolution, building permits for at least 70 townhouse units are issued by Montgomery County or equivalent generating at least 34 AM and 58 PM peak hour trips.
  - b. Within eight years (96 months) from the date of the mailing of this resolution, building permits for 176 total townhouse units are issued by Montgomery County or equivalent generating at least 88 total AM and 119 total PM peak hour trips.
  - c. Within 11 years (132 months) from the date of the mailing of this resolution, building permits are issued by Montgomery County or equivalent generating at least 222 total AM and 449 total PM peak hour trips.

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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.

- d. By 15.5 years (186 months) from the date of the mailing of this resolution, all building permits associated with the Preliminary Plan are issued by Montgomery County totaling up to 1,015 total AM and 1,203 total PM peak hour trips.
5. The Following major site amenities shall be included with the Site Plan submission with the corresponding phases of development:
  - a. Phase IA and IB shall provide any necessary recreation requirements for residential development, all public street sections, the hardscape for the Fitness Trail, and fencing, signage and seating for the Waters Memorial Park.
  - b. Phase II shall provide the farm production area, and landscaping along the Fitness Trail.
  - c. Phase III shall provide amenities around the Pond and complete the Waters Memorial Park.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated August 22, 2019 and incorporates them as conditions of the Preliminary Plan approval, except for condition 18b of the MCDOT letter, which the Board modifies to requiring only once Phase III is implemented. 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.
7. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
8. 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 July 3, 2019 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.
9. 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 January 31, 2019 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.

10. The Planning Board accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in its letter dated May 16, 2019, 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.
11. The Planning Board accepts the recommendations of the Historic Preservation Commission (HPC) in its letter dated May 14, 2019 and incorporates them as conditions of Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter in addition to the following conditions and clarifications:
  - a) Prior to construction of Phase I improvements to Waters Memorial Park, as determined by site plan, the Applicant shall implement condition 3 of the HPC letter creating a detailed maintenance plan for the park and cemetery.
  - b) Phase I improvements to Waters Memorial Park shall be provided for on a site plan no later than Phase IB.
  - c) Waters Memorial Park shall be a component of any site plan for non-residential use in Phase III of development.
12. Before Staff certification of the Preliminary Plan the Applicant must show any necessary design specifications certified by an engineer specializing in acoustics ensuring that interior spaces of all buildings impacted by transportation noise greater than *65 dBA Ldn* will be mitigated to no higher than *45 dBA Ldn*; that all exterior spaces on lots 1-21 Block B are attenuated to under *70 dBA Ldn*; any outdoor open, amenity and recreation spaces in Blocks B, E and H are attenuated to under *70 dBA Ldn*;; and that all other outdoor open, amenity or recreation areas not including roads, alleys or private lots that are impacted by transportation noise will be constructed to attenuate projected noise levels within the outdoor area to under *65 dBA Ldn*.
13. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDOT to construct a 12-foot wide shared use path along the property frontage on Century Boulevard.
14. The Applicant must dedicate the following rights-of-way and ensure construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes. Only those roads [or portions thereof] expressly designated on the Preliminary Plan, “To Be Constructed By \_\_\_\_\_” are excluded from this condition:
  - a. Public sections of streets A, B, Garden Street and Kinster Drive, consistent with the standards of MC - 2005.01 as modified by MCDOT and shown on the Certified Preliminary Plan.

15. In accordance with the timing mechanisms identified below, the Applicant must ensure construction of the following off-site improvements by satisfying MCDOT requirements for the following:
  - a. Prior to the issuance of the 175<sup>th</sup> permit for any dwelling unit, the Applicant must design, construct and have inspected as complete by MCDOT a traffic signal at the intersection of Kinster Drive and Crystal Rock Drive, with the signal poles and boxes located in a location that can accommodate the ultimate intersection configuration required by condition 15c below;
  - b. No later than the submittal for any site plan for Phase II or Phase III, a major amendment to the site plan for Phase I that changes density, a major amendment to the Preliminary Plan that has any impact on trip counts, or five years from the mailing of this resolution, whichever comes first, the Applicant must perform a new signal warrant analysis for the intersection of Century Boulevard and Kinster Drive, and include any necessary supplemental analysis on the operations of Kinster Drive between Century Boulevard and Crystal Rock Drive, subject to the satisfaction of MCDOT. The Applicant shall design, construct and have inspected as complete by MCDOT or reimburse MCDOT for the cost of installing the signal at Century Boulevard and Kinster Drive at the time determined by the analysis.
  - c. Prior to issuance of the 175<sup>th</sup> permit for any dwelling unit, the Applicant must design and have approved by MNCPPC and MCDOT a capacity improvement at the intersection of Crystal Rock Drive at Kinster Drive that mitigates to the extent possible vehicle trip impacts that fit within the existing right-of-way and can accommodate the traffic signal required by condition 15a above. Prior to the issuance of any building permits for Phase III, the Applicant must reconstruct the intersection of Crystal Rock Drive at Kinster Drive based on the approved design.
  - d. Prior to issuing any building permits that result in a cumulative 446 PM peak hour trips from the Subject Property, the Applicant must either construct or provide documentation that permit, and bond have been posted to construct a second northbound right turn lane on Crystal Rock Drive at Father Hurley Boulevard;
  - e. Prior to issuance of any building permits that result in a cumulative 1,004 PM peak hour trips from Poplar Grove, the Applicant must construct a second left turn lane on eastbound Father Hurley Boulevard at Crystal Rock Drive or submit for review and construction to M-NCPPC and MCDOT an alternative improvement that adequately addresses intersection capacity at this intersection.

16. Prior to the construction of any of the off-site improvements identified in condition 15 of this Resolution, the Applicant must submit final engineering drawings to MCDOT for approval.
17. The Applicant must provide Private Roads Street A, Street B, Street C, Street E, Alleys 1A-1C, 2A-2D, Alley 3, Alley 4, Alleys 5A-B, Alleys 6A-B, Alley 7 and Alley 8 including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private and public 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. If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel. If there are structures above or below the Private Road, the record plat must clearly delineate the Private Road and include a metes and bounds description of the boundaries of the Private Road.
  - 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 any 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 cross-section specifications 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.
18. Prior to acceptance of Private Road C, the Applicant must install an advisory sign warning of a sharp curve posted with a 15mph speed limit, consistent with the Maryland SHA turn advisory speed sign standard W1-1a(1)(L&R) along Private Street C in the locations shown on the certified Preliminary Plan.
19. Prior to the issuance of any above grade building permits for the second phase of development, the Applicant shall coordinate with the HOA or community association that represents the Cloverleaf Townhouse condominium development on the north and south side of Kinster Drive to determine what requests for study

by MCDOT will be made for Kinster Drive between Crystal Rock Drive and Century Boulevard. The requests may include but are not limited to traffic calming measures, changes in lane markings, added signage, or other appropriate measures that are necessary for pedestrian safety and vehicle speed.

20. Before submitting a record plat application or clearing or grading on the Subject Property, the Applicant must receive Staff certification of Site Plan No. 820190060. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks and bikepaths, open spaces, and recreation amenities is determined through site plan review and approval.
21. There shall be no clearing or grading of the site prior to certification of the Final Forest Conservation Plan.
22. The record plat must show necessary easements.
23. The record plat must reflect all areas under common ownership.
24. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Liber 28045 Folio 578 ("Covenant").
25. The record plat must show the abandonment of 3,964 square feet of existing right-of-way for portions of the Corridor Cities Transitway in Century Boulevard and Dorsey Mill Road, as shown on the Certified Site Plan.
26. Interim uses including but not limited to farmers markets, festivals, community farming or gardens, food or vendor carts, outdoor shows, play spaces, gravel parking for pop-up events, or interactive art installations may be allowed in areas of the Preliminary Plan not yet regulated by a Site Plan, subject to any necessary temporary use permits required by MCDPS. Block A may also be either rough graded consistent with the FFCP or developed as a paved Park & Ride lot in coordination with MCDOT without Site Plan approval.
27. If an approved site plan amendment 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 certification of the site plan amendment.
28. The final location and number of MPDUs will be determined at the time of site plan approval.

29. All Future Site Plans and Site Plan amendments shall include a vehicle trip tracking table on the cover sheet, in a format approved by M-NCPPC, that keeps a cumulative total of how many peak hour peak period trips have been previously Site Plan Approved, and how many are proposed with the current Site Plan. The table must be based on the 2013 LATR Guidelines trip generation rates and submitted and updated with each current or future site plan or site plan amendment.
  
30. The Applicant shall implement the following recommendations for implementing transportation management on the Subject Property in coordination with MCDOT, which may modify the specific design standards based on the most current standards and needs at the time of future site plans:
  - a. On the Certified Preliminary Plan, identify the possible location of two bikeshare locations, on private property or open space, sized to accommodate a typical bike share station that measures 53 feet by 7 feet, and has at least 4 or more hours of direct solar exposure. These stations shall be located in accessible and centrally located spaces within the Maker District and the Mixed-Use Transit Oriented Districts (Phases II & III).
  - b. The Applicant shall provide one bikeshare station with any development in Phase II, and one bikeshare station with any development in Phase III, unless the Applicant provides proof of coordination that MCDOT no longer needs the station, in which case the applicant shall provide public bike racks, and a bike repair station or other bicycle improvements deemed suitable by MCDOT and M-NCPPC.
  - c. At the time of site plan for any multi-family or office building, displays that include real time transit, static transit, and other TDM information shall be considered for the lobby.
  - d. At the time of site plan for any area in Phase II the Maker District or Phase III the Mixed Use Transit District, at least one real time transit display shall be designed and located in highly trafficked areas within each Phase/District.
  
31. The Applicant must include the stormwater management concept approval letter, the Fire Department Access approval letter, the MCDOT approval memo and Preliminary Plan Resolution on the approval or cover sheet(s).
  
32. 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.*



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.*

a. *The block design is appropriate for the development or use contemplated*

The block design is appropriate for the mixed-use development shown on the Preliminary Plan. The blocks are laid out in a neo-traditional pattern with a grid of streets and alleys which will allow the townhouse units to front the streets and provide vehicle access mostly in the rears. The commercial blocks are centered around the main intersection of Kinster Drive and the Garden Street, and at the north end where office and multi-family development is planned around an open plaza.

b. *The lot design is appropriate for the development or use contemplated*

The lot sizes, widths, shapes and orientations are appropriate for the uses contemplated by the Preliminary Plan. Larger parcels are being created in the northern mixed-use area where future office and multi-family buildings are planned, and in the central Maker District where retail will be located. These larger parcels allow for parking facilities and flexibility in the future design of the commercial buildings. The remaining lots are a typical size and orientation for townhouse development in urban areas. All of the lots and parcels either directly abut a public or private road providing for the necessary access to each property.

Corner Lots - Truncation – 50.4.3.f.iii

The Subdivision Code requires corner lots at intersections be truncated by a straight line joining points located 25 feet back from the theoretical property line corner along each of the two property lines adjacent to the roadway. This additional right-of-way area is intended for adequate sight distance, turning movement channelization or the placement of traffic control devices. The Planning Board has authority to specify more or less truncation than otherwise required. The Preliminary Plan provides for the minimum or greater truncation where possible but has at some intersections provided less or no truncation at all.

The minimum or more truncation is provided at the entrance from Century Boulevard at Kinster Drive because of increased sight distance needs and the likelihood of future traffic signal placement. Internal to the Property the Applicant has provided some truncation, but for many intersections either no or reduced truncation is provided. Each intersection still meets the minimum sight distance and accommodates ADA compliant pedestrian crossings within the rights-of-way or the private street parcels. Providing full truncation would effectively push the structures away from the street edge which is counter to the urban design desired for the Subject Property.

*c. The Preliminary Plan provides for required public sites and adequate open areas*

The Preliminary Plan provides adequate areas for public facilities and open areas. A spine of public roads is being created for the creation of public streets for the Garden Street, Kinster Drive, and the other two access roads from Century Boulevard. A new park space is provided around the existing Waters Family cemetery which will protect the identified resource and provide access to the cemetery. Other parcels are created throughout the Subject Property allowing for open spaces including playgrounds, a central park, urban greens and a fitness trail.

*d. The Lot(s) and Use comply with the basic requirements of Chapter 59*

The lots were reviewed for compliance with the dimensional requirements for the CR zone as specified in the Zoning Ordinance. As an Optional Method project the requirements for lot size and necessary setbacks are to be established with Site Plans. Building heights are limited at 145 feet per the zone, and most buildings will be well shorter than the limit. Parcels are being created to provide for open space, and the need for off-street parking is considered as part of the Preliminary Plan Review. The provided uses of residential, office and retail are all allowed within the CR zone, and the lot and parcel sizes are adequate to support the envisioned structures.

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

2009 Germantown Employment Area Sector Plan

The Preliminary Plan substantially conforms to the recommendations within the 2009 Germantown Employment Area Sector Plan (Sector Plan). The Sector Plan's vision statement states "This Plan establishes a vision that will transform Germantown's central employment corridor into a vibrant town center and mixed-use uptown districts. The Germantown of the future will be the center of business and community life in upper Montgomery County". The Sector Plan further envisions Germantown completing an economic core for the upcounty, increasing employment, and organizing development around transit. Further areawide

recommendations include a zoning strategy for mixed use development and a vision for establishing an urban form which includes interconnecting transportation options, creating gathering spaces, establishing centers, and creating meaningful street character.

The Subject Property is specifically located in the North End District of Germantown which provides specific recommendations including clustering development at the future CCT station, and Subject Property specific recommendations to develop at an average density of 1.0 FAR with a mix of uses including 60% employment and 40% residential, to locate retail near transit and along Century Boulevard, and to take advantage of visibility from I-270. The future land use map also identifies the Subject Property as a location for creating an urban open space accessible to Century Boulevard. In addition, there is a planned need for possible parking for the future CCT station and the Sector Plan stated it should be provided by private development adjacent to the planned stops.

The Preliminary Plan substantially conforms to the goals and recommendations mentioned above. The Preliminary Plan provides new roads, blocks and lots to create a new mixed-use community that offers opportunities for employment, retail and housing, all centered around the future CCT station with a proposed total FAR of up to 1.02. The highest intensity of uses will be closest to the CCT station where large parcels are proposed that would accommodate office and multi-family uses. The design for this Mixed-Use Transit district envisioned a large open space area between the proposed buildings, that spans the entire width of the Subject Property from the CCT station to the amenity space along I-270, and also connected to the proposed Waters Memorial Park which will connect Dorsey Mill Road to the same urban open space. This mixed-use area is also identified as an area to possibly meet short term park and ride parking as requested by MCDOT as well as long term CCT parking requested in the Sector Plan. Future coordination between MCDOT and the Applicant will be required to determine the exact number of timing of the parking spaces. The Applicant has previously dedicated for the CCT and helped pay to construct a major portion of Century Boulevard to a width that can accommodate the future CCT. Some dedication is still required for Century Boulevard where the road was built on agreement with DOT and the Applicant on the Applicants land.

While the Preliminary Plan slightly deviates from the recommendation in the Sector Plan that this specific Subject Property provide 60% employment uses and only 40% residential uses, the Planning Board considered at the time of Sketch Plan that there is minimal market for employment uses in the Sector Plan area, and a ratio closer to 55% residential and 45% employment uses is substantially consistent. The Preliminary Plan maintains the employment and residential ratios from the Sketch Plan.

### Noise Guidelines

The Environmental section of the 1993 General Plan Refinement for Montgomery County contains multiple objectives directing the Planning Board to protect future residents and workers from unacceptable noise levels. The 1983 Staff Guidelines for the Consideration of Transportation Noise (“Noise Guidelines”) contain strategies for mitigating the impact of transportation noise on new residential development. The Noise Guidelines map has the Subject Property in the 60 dBA Ldn guideline area based on the relatively low volumes on I-270 and the suburban nature of development in Germantown in 1983. The Area of Application table within the Noise Guidelines however references that areas that are urban, adjacent to freeways, major highways or corridor areas are more appropriately reviewed with a 65 dBA Ldn guideline. The Applicant in their submitted noise analysis (Attachment L) has requested the Preliminary Plan be reviewed using the 65 dBA Ldn guidance as the baseline because the Subject Property is CR zoned for urban like densities and is adjacent to I-270, a major commuter highway. The Board agrees the 65 dBA Ldn is a more realistic value given the changes that have occurred in Germantown since 1983.

Based on the surveyed existing noise levels, almost the entire Subject Property is in excess of 60 dBA Ldn currently, with half of the Subject Property exceeding 65 dBA Ldn. The future noise projections for anticipated noise in 20 years has the entire Subject Property over 60 dBA Ldn, and large portions of the eastern and northern portions of the Subject Property closer to I-270 over 70 dBA Ldn. The Applicant studied various mitigation techniques, however the topography of the Subject Property sits lower than the noise source making it difficult to do effective noise mitigation. The Applicant requested further relief of the Noise Guidelines and would provide approximately 1,100 feet of 20-foot tall noise wall, located within the SHA right-of-way subject to SHA approval, to mitigate as much noise as practical. This results in approximately a five dBA Ldn reduction in ground level noise across the Subject Property and keeps values above 70 dBA Ldn from reaching any of the residential units. Certain residential units and outdoor spaces however are still impacted above 65 dBA Ldn including lots 1-21 in Block B, 1-7 and 39-41 in Block C, 1-5 in Block E, and 1, 2 15-17 in Block H. The Applicant’s noise analysis also discusses interior space mitigation of noise, and while certain units closest to the interstate would not be able to open windows without enduring excessive noise exposure, construction techniques can allow interior spaces with windows closed to be at or below 45 dBA Ldn, which is consistent with the Noise Guidelines.

### *Noise Waiver*

The Noise Guidelines in Section 2.2.2 allow the Board to waive part or all of the guidelines *if use of all feasible exterior attenuation measures cannot protect noise*

*sensitive rooms on upper floors or outdoor patio areas, or if exterior attenuation is not feasible. Exterior noise attenuation measures may be infeasible due to economics, aesthetics, or site-related constraints of size, shape, or topography.* The Applicant contends they have done everything that is feasible to attenuate for noise impacts to the Subject Property, given the size of I-270 and the topographical constraints. The Applicant is coordinating with SHA to locate the wall as close to the noise source as possible, but in a best case the wall still is expected to be at least 15 feet off the edge of pavement, where elevations are already dropping. A wall height of almost 30 feet would be needed to fully meet the 65 dBA Ldn requirement, which is only marginally better than the mitigation provided by a 20 foot high wall, while increasing undesirable aesthetic and economic impacts. Based on the future noise levels with the installed wall and buildings, most of the townhomes on the Subject Property would be below the 65dBA Ldn level except for the sticks of townhomes closest to I-270 and the exit ramp, and these units would only have the impacts on one side of the structure. Most open spaces would also be below 65 dBA Ldn, except for those in Blocks B, E and H. As conditioned, The Planning Board supports the mitigation provided by the Applicant as the best possible given the constraints and approves the waiver and accepts the findings of noise compliance with the General Plan.

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

The Public Facilities in the area are adequate to support the Preliminary Plan anticipated development. The Applicant of the Subject Property currently has a Provisional Adequate Public Facilities (“PAPF”) approval from December 18, 2015 by Resolution MCPB No. 15-149 that provides the Subject Property with a development cap equivalent to 1,558 AM peak hour during the peak period trips and 1,762 PM peak hour during the peak period trips. The PAPF was granted in exchange for the Applicant coordinating with MCDOT to provide substantial engineering and funds toward the construction of Century Boulevard across the Subject Property frontage. As part of this APF review, the PAPF is converted into a full APF including an analysis of schools and other public facilities.

e. Roads and Other Transportation Facilities

Transportation access and infrastructure will be adequate to serve the development in this Preliminary Plan.

i. *Existing Facilities*

The Subject Property will have access to Century Boulevard, which is a four-lane road with a planned 150 feet of right-of-way with center median that runs along the western side. North of the Subject Property is land dedicated for the future Dorsey Mill Road which will intersect with Century

Boulevard at the northwest corner of the Subject Property, however there will be no direct vehicle access to Dorsey Mill Road. These rights-of-way include the space necessary for the future construction of the Corridor City Transitway bus rapid transit line. Additionally, along the western Subject Property frontage is an intersection of Kinster Drive and Century Boulevard, with Kinster Drive being planned to extend onto the Subject Property. These existing built roads include bicycle and pedestrian facilities. Sidepaths exist on the north side of Kinster Drive, and on the western side of Century Blvd, and sidewalks are on the opposite side of both roads. The closest current transit connection is approximately 1,600 feet away at the intersection of Kinster Drive and Crystal Rock Drive.

ii. *Proposed public transportation infrastructure*

The Preliminary Plan completes the necessary right-of-way dedications for Century Boulevard, and no further dedication is needed for Dorsey Mill Road. On the Subject Property, four new segments of public streets are established, identified on the Preliminary plan as the Garden Street, an extension of Kinster Drive, Street A between Century Boulevard and the Garden Street, and Street B between Century Boulevard and the Garden Street. These streets are all modified Business District Streets to provide parking only on one side of the street, and to reduce the width of tree planters and maintenance areas. These streets include public sidewalks on both sides of each street segment. Additionally, the Applicant will be upgrading the sidewalk along the Century Boulevard frontage into a 12-foot-wide sidepath enhancing the bicycle and pedestrian circulation in the area, consistent with the 2018 Bicycle Master Plan recommendations.

iii. *Proposed private transportation infrastructure*

The remaining streets not mentioned above, and all alleys, are proposed as private streets. These streets and alleys will be providing access to the individual townhouse lots and are not expected to carry the same traffic volume as the public streets.

Private Road Justification 50.4.3.E.4.b

The Subdivision Code requires a justification for any proposed private roads, including a list of design elements that do not meet public standards that would not be addressable through a Maintenance and Liability agreement with the County, including why these standards are necessary for the proposed development. The Applicant provided a justification which identifies the primary reasons for providing private streets is not providing proper street terminus required by the Subdivision Code, and because a portion of street C near the intersection with Alley 3 and the central open space in Block E has a centerline turning radius of 45 feet, which is below the minimum requirement of 100 feet. MCDOT does not support waiving

either requirement if the roads are to be publicly maintained. The Board accepts the private streets because it wants to encourage the creation of an urban like development without large cul-de-sacs and wide turning radii.

Waiver of 50.4.3.E.2.e.iii – non-through roads termination

Section 50.4.3.E.2.e does not support the creation of any roads that do not connect to another road unless four determinations are made:

- a. that a through road is infeasible due to a property's shape, size, topography, environment or characteristics of abutting properties;
- b. that the road provides access to no more than 75 dwellings;
- c. the road is properly terminated in a cul-de-sac or other turnaround; and
- d. that the road is less than 500 feet in length.

The Preliminary Plan proposes non-through roads, including the northern terminus of Private Street C, and the eastern terminus of Private Streets E and B. The Subject Property is very constrained with the entire eastern edge being I-270 and associated exit ramps in addition to a Washington Gas easement, the northern edge being a future street that will include embankments to bridge over I-270, and the southern edge as an existing stormwater facility. To best utilize the Subject Property and achieve recommended density, it is more efficient to terminate streets rather than create a loop road. Street C does include a fire department compliant turnaround because its length is longer than the 150 feet that the fire department will accept without accommodations, but all three streets do not terminate in any County standard. Because the proposed street design does not comply with determination C above about proper termination, the Applicant requested to waive this requirement for the ends of Streets B, C and E. The Board has authority to waive any element of Chapter 50 if it makes the following findings from Section 50.9.3:

1. *Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

The significant constraints in shape of the Subject Property limit flexibility and layout. The size of an acceptable turnarounds such as a cul-de-sac is over 100 feet in diameter and not in keeping with the urban grid of streets anticipated by the Master Plan or the CR zone. Streets B and E are less than 150 feet long and serve less than 20 units so the fire department can access the units as designed, and traffic volumes will be very low which minimizes the chance of conflicts created by not having a proper terminus.

2. *The intent of the requirement is still met;*

The intent of a proper terminus is to ensure efficiency and safety of the road network. Standard turnarounds were not required for public

safety on Streets B and E, and a modified turnaround has been provided for safety purposes at the end of Street C. The volumes on these streets will be very low and maintenance and snow removal will be privately done and not a burden on the County.

3. *The waiver is:*

- a. *The minimum necessary to provide relief from the requirements;* Waiving subsection C for providing a proper termination at the end of all non-through streets is the minimum necessary to provide the required relief.
- b. *Consistent with the purposes and objectives of the General Plan* Granting this waiver would still remain consistent with the General Plan. The alternative available would substantially compromise the design of the site and would likely reduce the total achievable density and programming substantially.

Based on these findings for a waiver, The Planning Board approves the waiver request to not require a proper terminus on the ends of Streets B, C and E and instead allow the designs as shown on the Preliminary Plan drawings.

Waiver of 50.4.3.E.4.c – Standards of Private Streets

Section 50.4.3.E.4.c requires that unless modified by the Board, any private roads should be built to the construction specifications of the corresponding public road concerning paving detail and design, including surface depth and structural design. The road must also be designed with sound engineering principles for safe use including vertical alignment, adequate space for vehicles, pedestrians and bicycles, compliance with ADA, stormwater, lighting, landscaping and utilities. Private roads must conform with the horizontal alignments required in Chapter 50.

The private streets proposed by this Application do not completely conform to the standards of the business district or residential tertiary street sections maintained by MCDOT, but generally remain consistent with the width of pavement, parking lanes and sidewalks, and will meet the same public structural standards of those public streets. Modifications were made to the width of tree panels and the location of parking to reduce the overall width of the streets. The private street sections are substantially similar to the modified public sections being approved by MCDOT elsewhere in Poplar Grove. The non-standard termination is one variation which the Planning Board has accepted with a waiver.



One portion of street C also does not meet the horizontal alignments found in Section 50.4.3.E.2.g, which require a minimum 100-foot centerline turning radius. The turning radius provided is 45 feet. Horizontal alignment modifications are not listed as an element the Board may modify under 50.4.3.E.4.c, however the Board may modify any portion of Chapter 50 through a waiver in Section 50.9.3 if it makes the following findings:

1. *Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

The Sector Plan, the CR zone and the Board all recommend an urban like development for the Subject Property. Given the constraints of the land, the northern half of the Subject Property can accommodate two city blocks in width while the southern only one block. This creates the need in Street C to have just a two-leg intersection, that effectively creates a 90 degree bend in the road. The County road standards are all based on a minimum speed of 25 MPH which dictates the 100-foot minimum turning radius, rather than a smaller 45-foot radius on the plans. AASHTO's *A Policy on Geometric Design of Highways and Streets (2011)* states that a 15 MPH street can accommodate a centerline turning radius of 42 feet. As conditioned the Applicant shall install warning curve signs posted for a safe speed of 15 MPH on both approaches to this intersection as a precaution to warn motorists of the sharp curve. With this condition, the Board finds the public health, safety and welfare of the public is maintained.

2. *The intent of the requirement is still met;*

With the required posting of reduced speeds approaching and around the curve in street C, the intent of the minimum centerline turning radius is still met in matching the streets horizontal design and posted speed.

3. *The waiver is:*

- a. *The minimum necessary to provide relief from the requirements;*

Waiving the requirement of meeting the horizontal alignment standards of Chapter 50 for Street C is the minimum necessary to ensure the Application remains in compliance with Chapter 50.

- b. *Consistent with the purposes and objectives of the General Plan*

Granting this waiver would still remain consistent with the General Plan. This waiver does not pose a major safety risk and enhances the Board's vision for Germantown of creating an urban community.

Waiver of 50.4.3.I.3.b – Public Infrastructure Area

In implementing private streets on the Subject Property, Section 50.4.3.I.3.b requires Applicants with private streets to provide the County an additional Public Infrastructure Area (PIA) at least four-feet wide adjacent to all private roads, or in another appropriate space creating contiguous service corridors that provide for future relocation of utilities, or the provision of new communication facilities. For Poplar Grove, the Applicant is providing the necessary conduit consistent with a PIA within the private street parcel rather than adjacent to the private street parcel. While Chapter 50 provides for the Board to designate an alternative appropriate space, County staff from MCDOT and Ultra Montgomery have raised concerns that the associated easement with a PIA cannot be located in a private street parcel because any easement granted to the County is effectively the same as a dedication. Providing the conduit consistent with the PIA intent, but to not within a specific easement results in a need to consider a waiver of Section 50.4.3.I.3.b to not require the formal establishment of PIAs for Poplar Grove and instead allow the conduit to be controlled by Site Plan conditions. Section 50.9 allows the Planning Board to waive any requirement of Chapter 50, pursuant to three findings as detailed in Section 50.9.3.

1. *Due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

The Preliminary Plan envisions Poplar Grove as an urban neighborhood, and that vision is supported by the Subject Property's zone and the Master Plan. The requirement of a separate four-foot PIA is contrary to creating an urban neighborhood if it is not allowed to co-exist with the private streets or alleys like other utilities. As conditioned, the Applicant will still provide the intent of a PIA in a way that allows it within the private street parcels. The Applicant will still provide a conduit to provide for future telecommunications, therefore this waiver does not create a lapse in public health, safety or general welfare.

2. *The intent of the requirement is still met;*

With the agreement to provide an empty utility conduit, with Site Plan governing use and maintenance of the conduit, the intent of creating capacity for future communications infrastructure is still met.

3. *The waiver is:*

- a. *The minimum necessary to provide relief from the requirements;*

Waiving the requirement to establish a formal PIA is the minimum necessary to ensure the Application remains in compliance with Chapter 50.

*b. Consistent with the purposes and objectives of the General Plan*

Granting this waiver would still remain consistent with the General Plan. This waiver does not inhibit the County's desires to expand telecommunication infrastructure in the future and has no other impact on any provisions in Chapter 50.

Based on the above findings, the Board grants a waiver allowing the Applicant to forgo establishing a PIA as required by 50.4.3.I.3.b and instead accepts the requirement that the Site Plan condition the construction, usage rights and maintenance of the utility conduit.

iv. *Abandonment*

The Preliminary Plan includes a request to abandon land located at the corner of Century Boulevard and future Dorsey Mill Road. This land was initially dedicated to the County for the future CCT alignment and for the construction of Dorsey Mill Road including Outparcel S, shown on Plat 19217, right-of-way shown on Plat 22484, and right-of-way along Century Boulevard shown on Plat 20279. The original dedications were done assuming the CCT as a light rail system that would have run on the east side of Century Blvd, while current planning has the CCT as a bus rapid transit line in the median, which utilizes less space. The abandonment request was included as a section of the statement of justification. Section 50.8.4 of the Subdivision Code allows the person who originally filed the plat which dedicated land to the County for public use or their successor in interest to petition the Planning Board to abandon land previously dedicated to the County if the land has not been in public use. This abandonment process is further discussed by Section 49-68 of the Montgomery County Code.

Based on Section 49-68(e) of the County Code, the Planning Board must find *that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision. Additionally, the amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses.* The land requested for abandonment does not currently contain any utilities, or other improvements and therefore The Board determined the right-of-way is not currently in public use. Based on coordination with MCDOT to determine if this right-of-way would reasonably be needed for future public

use, specifically a protected bicycle intersection, 3,964 square feet of land could be returned to the Applicant. MCDOT supports this abandonment, subject to the Applicant agreeing to accept the relocation of any historic resources or graves found within the Dorsey Mill right-of-way onto the Subject Property, which the Applicant concurs with. Based on the above, the Planning Board grants the abandonment of 3,964 square feet of right-of-way at the intersection of Dorsey Mill Road and Century Boulevard, as shown on the Preliminary Plan.

f. Local Area Transportation Review (LATR)

The approved mix of uses in the Preliminary Plan generates 1,028 vehicle trips during the AM weekday peak period and 1,325 vehicle trips during the PM weekday peak period based on the trip generation rates located in the 2013 LATR guidelines that were in effect when the PAPF was first approved in 2015.

The current PAPF approval is for transportation trips only. The PAPF includes up to 1,558 AM weekday peak hour during the peak period trips and 1,762 PM weekday peak hour during the peak period trips. Additionally, during the AM period, inbound trips are limited to no more than 70% of the total and no less than 60% of the total. In the PM, inbound trips are limited to no more than 45% of the total and no less than 30% of the total. The PAPF was granted because the Applicant was providing the land and some funding toward the construction of Century Boulevard across the Subject Property frontage. This Preliminary Plan amends the PAPF based on the density requested by the Preliminary Plan and incorporates it into this Preliminary Plan's approval.

*Transportation Mitigation*

The traffic study from the PAPF approval identified certain road improvements that were necessary to mitigate for the trips approved with the PAPF. These improvements were conditioned in Conditions 5, 6 and 7 of the PAPF resolution, with the timing to be determined by the Board when needed. The timing of the improvements is based on when the Applicant crosses certain trip generation thresholds, based on the trip generation rates from the 2013 LATR guidelines used in the initial PAPF approval including allowed deductions. The Applicant will upload the trip generation tables from the 2013 LATR Guidelines to any future Site Plans and will also include a trip tracking table showing how many trips each phase of development is creating.

The PAPF approval identified five off-site intersection improvements that would require mitigation as part of the development of the Subject Property. The Applicant submitted analysis showing when these improvements would be required based on the standard LATR analysis as recommended by Staff,

plus additional methodologies that accounted for lesser amounts of background traffic because the adjacent approved developments were not building as quickly as anticipated. The Applicant also brought up the uniqueness of the PAPF process, and that the PAPF approval stated the Board may determine when these improvements are necessary. The Planning Board at the Hearing considered both arguments and found the standard LATR process for determining intersection improvements was not practical because of the size and timeline of the adjacent development projects and made the following recommendations to ensure transportation capacity remained adequate during the development of the Subject Property based on the improvements required in the PAPF:

a. *Construct a second northbound right turn lane on Crystal Rock Drive at Father Hurley Boulevard*

This improvement is a condition of both the adjacent Black Hill project and of Poplar Grove to construct. Based on the LATR methodology, construction of this improvement is required before any permits are issued for the Subject Property. Black Hill is unable to receive any additional site plan development approvals without being required to improve this intersection. Based on the current approvals in Black Hill, Poplar Grove can add 446 new PM peak hour trips before the intersection fails. The Board is assured this improvement will be made and therefore approved requiring this improvement be completed by the Applicant or others prior to the Subject Property generating more than 446 PM peak hour trips.

b. *Stripe a second southbound left turn lane on Observation Drive at Ridge Road*

This improvement has already been constructed by others and is open to the public. No further action is required by the Applicant.

c. *Construct the Dorsey Mill Road bridge over I-270*

The Applicant has provided a participation agreement demonstrating that Black Hill is fully responsible for the costs associated with Dorsey Mill Road, therefore the Board determined the Applicant has no further requirement

d. *Construct a second left turn lane on eastbound Father Hurley Boulevard at Crystal Rock Drive*

Based on the LATR methodology, this improvement is required by the Applicant when there are 1,004 PM peak hour trips generated on the Subject Property. The Planning Board accepts this recommendation for this improvement.

- e. *Reconstruct the northbound and southbound approaches of Crystal Rock Drive at Kinster Drive to include one through /left lane, one through lane and one right turn lane on northbound Crystal Rock Drive, and on southbound Crystal Rock Drive the lane configuration must include one through /left lane and one through /right lane. Adjustments to the number of lanes or intersection configuration can be made as determined with future applications for the development of the Subject Property or by MCDOT.*

Staff presented to the Board that this improvement, based on the LATR methodology, is required once the Subject Property generates 352 PM peak hour trips. The Board determined based on the Applicant's testimony that this trigger was too soon, and instead has required this improvement be constructed prior to any permits are issued in Phase III of development, which is the phase with the most density and associated vehicle trips.

The PAPF identified the need to provide a signal warrant analysis for the intersections of Century Boulevard at Kinster Drive, and at Crystal Rock Drive at Kinster Drive. When the warrants are met, the Applicant is requested to install the signals. A warrant analysis was performed and determined that Phase I met warrants for a signal at Crystal Rock Drive and Kinster Drive, and the signal is warranted at Century Blvd and Kinster Drive in Phase III. MCDOT requested that both signals be provided in Phase I out of operational concerns that the intersection of Kinster Drive at Crystal Rock Drive may cause a queue to block the entrances to the existing townhome developments along Kinster Drive. The Board is requiring the signal at Kinster Drive and Crystal Rock Drive be operational prior to issuing the 175<sup>th</sup> residential building permit which is near the end of Phase I. In acknowledging that the signal warrant is not met for Kinster Drive at Century Boulevard with Phase I, but recognizing MCDOT concerns, the Applicant is required conduct a new signal warrant analysis with additional operational analysis for Kinster Drive with the submittal of the next Site Plan, with a major Preliminary Plan amendment, or within five years to determine when the appropriate trigger is for the signal. The Applicant will then be responsible for installing that signal at or before the determined trigger.

g. Public Schools

The existing PAPF approval for the Subject Property only covers transportation. As part of the Preliminary Plan, the PAPF is being amended to include a school capacity test.

The number of students generated by the Preliminary Plan was calculated based on the number of dwelling units in each unit type, using the upcounty

region generation rates established by MNCPPC AND MCPS. With a net of 176 townhouse units and up to 365 multifamily (high rise) units, the Preliminary Plan is predicted to generate 50 elementary school, 24 middle school and 31 high school students at full build-out. The Subject Property is located in the Seneca Valley High School Cluster. There is no cluster wide moratorium for the Seneca Valley Cluster at any school level. The Subject Property is in the Waters Landing Elementary and Martin Luther King, Jr. Middle School boundaries. Both schools are projected to operate at or below 100% capacity therefore there is adequate school capacity for the Preliminary Plan.

h. Other Public Facilities and Services

All other public facilities and services are adequate to service the Preliminary Plan. The plans were reviewed for fire and safety access and were deemed adequate. The gas, telecommunication and electric utility companies also reviewed the plans and gave their approvals. Rather than providing the standard 10' PUE free and clear along all roads, a standard 10' PUE will be located along Century Blvd and the future Dorsey Mill road, and all utilities, including future utilities as requested by Ultra Montgomery will be placed in conduits in utility easements that will generally be located under the private roads or alleys. Water and sewer will be served by WSSC, and health services are operating within the standards set by the Subdivision Staging Policy.

i. APF Extension

The original PAPF was issued for the Subject Property on December 18, 2015 and had a validity period of 85 months (7 years, 1 month), which would have the PAPF expiring on January 18, 2023. The original validity period was set at seven years because at the time there was no clear timeline for plan phasing or anticipated development types. The Preliminary Plan now has a defined proposal for density and has set forth a plan validity phasing schedule of four phases and up to 12 years. The existing PAPF is also being amended and converted into a full APF with the inclusion of schools and other public services and facilities. The Applicant requested that a 12-year extension be granted for the project, pursuant to Section 50.4.3.J.5.e of the Subdivision Code, for a total of approximately 16 years of APF validity remaining at the time of Preliminary Plan approval.

The referenced above Subsection states *The Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period pursuant to making three findings. These findings are as follows:*

- i. *The Preliminary Plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million, as adjusted annually by the consumer price index, to comply with specified infrastructure conditions.*

The Applicant has demonstrated a significant commitment in the construction of approximately 2,500 feet of Century Boulevard between Father Hurley Blvd and the future intersection with Dorsey Mill road. The Applicant paid for 100% of design and permit, and 35% of construction costs. The cost, provided directly to Montgomery County for the construction portion alone were over \$3.27 million, in addition to other costs related to the road design and permitting.

- ii. *The Applicant has met or exceeded the required infrastructure conditions during the original validity period.*

The Applicant has met the required infrastructure conditions within the current validity period. The Applicant entered into the original APF agreement in exchange for providing Century Blvd. up front. While other conditions for additional off-site transportation improvements were identified with the initial APF approval, they were based on full build-out impacts and since construction has not occurred on the Subject Property, these additional improvements are not warranted.

- iii. *The Applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable Master Plan.*

The Applicant providing for Century Boulevard represents a significant and necessary public benefit. Century Boulevard is a Master Plan identified roadway that acts as the main transportation infrastructure linking the development projects on the west side of I-270. The road was designed and constructed to include the 50+ foot wide median necessary to accommodate the future CCT which is also a major County and Master Plan priority in Germantown.

Based on the three findings above, the Board grants an extension of APF validity under 50.4.3.J.5.e for up to 12 additional years, extending the APF validity to January 18, 2035. This would allow for approximately 3 ½ years of APF validity beyond the expiration of the plan validity, if the four phases and 12 years of plan validity are approved by the Board.

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



The Subject Property is covered by two separate Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) approvals; NRI/FSD No. 420011560 included the entire Subject Property with the exception of Parcel B, and NRI/FSD No. 420110810 which added parcel B. The NRI/FSD's identified an existing stormwater management facility provides treatment for Century Boulevard, and an existing stream that has been piped located in the southern portion of the Subject Property near the stormwater management facility. This stream travels under Father Hurley Blvd and Century Blvd. There is no forest on the Subject Property or any highly erodible soils. There is one significant tree, a 27" Diameter at Breast Height white pine located within the Dorsey Mill Road right-of-way. This tree will be removed as part of the Dorsey Mill Road construction. The entire Subject Property is covered by approved Preliminary Forest Conservation Plan 119881560, which identified two afforestation areas totaling 1.41 acres (61,419 square feet) to be located on the Subject Property. These areas have not been planted, and the Applicant submitted revisions requesting the planting location be met at an off-site location. The Board supports this request because there are no priority planting areas on the Subject Property. All other forest conservation requirements related to this Subject Property have been satisfied through forest planting within the stream buffer on the overall Cloverleaf Center development and within the Black Hills subdivision property.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a conditional stormwater concept approval from MCDPS water resources division on July 3, 2019. The Application will meet stormwater management goals by providing ESD to the extent possible with green roofs, micro-bioretenion and underground storage structures. In addition, some runoff will utilize the existing pond at the south end of the Subject Property which will be retrofitted.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M*

The Subject Property contains a known burial site, the Waters Family cemetery. The cemetery contains five identified headstones dating from 1824 – 1864, and the presumed limits of the cemetery have previously been fenced in. When a known cemetery is identified on a property, the Applicant must satisfy four requirements as specified in 50.4.3.M.1, which have been satisfied as follows:

- a. *The Applicant must use the Montgomery County Planning Board Guidelines for Burial Sites to establish the location of the burial site. Unless Planning Department Staff believes that vandalism concerns dictate otherwise, the*

*corners of the burial site must be staked in the field before preliminary plan submittal. If required, the stakes must be maintained by the applicant until Preliminary Plan approval.*

The review of this Preliminary Plan occurred before the Planning Board Guidelines had been finalized but was done in close coordination with M-NCPPC staff to ensure best practices that were included in the draft guidelines were adhered to, including extensive coordination and conditions during the Sketch Plan review of the Subject Property. The corners of the known burial site are defined within the existing fence which has been located on the submitted plan drawings.

- b. *An inventory, that may include photographs, of existing burial site elements (such as walls, fences, gates, landscape features, fieldstones, grave locations, and tombstones) and their condition must be submitted as part of the Preliminary Plan application.*

The Applicant provided on the Preliminary Plan drawings the location of the existing fence and tombstones visible on the Subject Property. The Applicant then completed a Phase I archeological investigation on portions of the Subject Property in vicinity to the known burial site and submitted a Management Summary (Attachment R) that includes the results of ground penetrating radar identifying five soil anomalies which were further investigated.

- c. *The placement of lot lines must promote long-term maintenance of the burial site and protection of existing elements.*

Based on the results of the field investigations summarized in the Management Summary, all existing elements associated with the burial site are contained within the existing cemetery fence. A larger parcel is proposed to surround the cemetery with the intent of establishing a park to provide access to and future maintenance of the cemetery.

- d. *The burial site must be protected by arrangements sufficient to assure the Planning Board of its future maintenance and preservation, as specified in the Montgomery County Planning Board's guidelines for burial sites.*

As conditioned, the future maintenance will be determined with the Phase 1 Site Plan and will include the construction of the planned park space, which will be maintained by the future HOAs. This should be sufficient to ensure the cemetery will be accessible and maintained in the future.

In addition to the four requirements above, appropriate measures to protect the burial site must be ensured during the development process, and except under defined circumstances, the graves must remain where they are found. This Applicant is agreeing to keep the existing graves in their current locations, and the existing fence around the cemetery serves as an adequate LOD to ensure the

site is not disturbed during construction. The Historic Preservation Commission gave their approval to the project subject to conditions (Attachment Q).

The Applicant has also been coordinating with MCDOT on the possibility of relocating possible gravesites identified within the right-of-way for future Dorsey Mill Road into space available within the fenced in cemetery area on the Subject Property. The details of this relocation will be coordinated at a future time between the Historic Preservation Commission, MCDOT and the Applicant, and will be the responsibility of MCDOT to lead, and implement.

7. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

**Preliminary Plan Validity and Phasing**

Preliminary Plan validity is granted by the Planning Board per Section 50.4.2.G of the Subdivision Code. Multi-phase projects however may seek plan validity beyond the standard 36 months if associated with a phasing plan. Subsection 50.4.G.2.b specifies that each phase shall be assigned its own validity period based on the size, type and location of the project, each phase shall be no more than 36 months in duration, and that the APF validity must be equal to or longer than the cumulative plan validity. The Applicant has proposed four phases for the Preliminary Plan to provide ample time to find builders of the various development types. The Applicant is requesting that any phase can occur in any order, so long as every 36 months (3 years), another one of the phases is met.

| <b>Phases</b> | <b>Development</b>                   | <b>Trips</b>            |
|---------------|--------------------------------------|-------------------------|
| Phase IA      | Plats for 70 townhouse dwellings     | 34 AM/58 PM Peak Hour   |
| Phase IB      | Plats for 106 townhouse dwellings    | 54 AM/61 PM Peak Hour   |
| Phase II      | Plats for parcels E4, E6, F2, And G2 | 134 AM/330 PM Peak Hour |
| Phase III     | Plats for parcels A1 – A4            | 793 AM/754 PM Peak hour |

The Board finds the requested four phases with a cumulative 12 years of plan validity is appropriate for this Preliminary Plan. Development of the townhouse neighborhoods is the most likely to proceed first. The retail and limited multi-family uses within the Phase II Maker District is likely dependent on the townhouse phases at least being under construction if not nearing completion to establish a market need. In the current office market, the construction of the office space in the Phase 3 Mixed-Use district is likely dependent on either the CCT receiving construction funding or the Dorsey Mill Road being completed; both of which are many years away from implementation. The uncertainty is also justification for allowing flexibility in the order these phases are actually implemented.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for up to 144 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 OCT 30 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).

\* \* \* \* \*

**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 Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, October 24, 2019, in Silver Spring, Maryland.



\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board