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

Agenda Date: March 5, 2020
Agenda Item No.:

February 27, 2020

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Gwen Wright, Planning Director

VIA: Elza Hisel-McCoy, Chief, Area 1
Stephanie Dickel, Supervisor, Area 1
Grace Bogdan, Planner Coordinator, Area 1

RE: Correction of Resolution
Administrative Subdivision Plan No. 62020100
MCPB No. 19-137, 7025 Longwood Drive

Please find the attached redlined version of the Resolution for Administrative Subdivision Plan No. 62020100, 7025 Longwood Drive. This Resolution was adopted by the Planning Board at the January 30, 2020, Planning Board Hearing, and were mailed out to all parties of record on February 6, 2020. This Corrected Resolution corrects the validity period for the subdivision.

cc: Christina Sorrento, Associate General Counsel

MCPB No. 19-137
Administrative Subdivision No. 620190100
7025 Longwood Drive
Date of Hearing: December 19, 2019

CORRECTED RESOLUTION

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

WHEREAS, on April 3, 2019, Paul Katinas ("Applicant") filed an application for approval of an administrative subdivision plan of property that would create two lots on 0.99 acres of land in the R-200 zone, located on Longwood Drive approximately 280 feet east of Brooke Drive ("Subject Property"), in the Bethesda/Chevy Chase Policy Area and 1990 *Bethesda-Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's administrative subdivision plan application was designated Administrative Subdivision Plan No. 620190100, 7025 Longwood Drive ("Administrative Subdivision 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 9, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 19, 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 December 19, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Verma, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620190100 to create two lots on the Subject

Approved as to
Legal Sufficiency: 2/27/19
M-NCPPC Legal Department

Property, subject to the following conditions:[1]

1. This Administrative Subdivision is limited to two (2) lots for one single-family dwelling unit on each lot.
2. The Adequate Public Facility (APF) review for the Administrative Subdivision will remain valid for sixty (60) months from the date of mailing of the Planning Board Resolution.
3. Access for the two lots subject to this administrative subdivision is limited to a single shared driveway for both lots. The record plat must include a note stating access is denied along the remainder of the frontage for Lot 1.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated November 25, 2019 and hereby incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Administrative Subdivision Plan approval.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Fire Code Enforcement Section in its letter dated November 19, 2019, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Administrative Subdivision Plan approval.
6. Prior to record plat, the Applicant must receive a revised Stormwater Concept Plan approval.
7. The record plat must show necessary easements.
8. Prior to approval of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:
    a) Show resolutions and approval letters on the certified plan;
    b) Include the following note *"building heights, on-site parking, site circulation, and sidewalks shown on the Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s) 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. Other limitations for site development may also be included in the conditions of approval."*
9. The Applicant must comply with the conditions of Final Forest Conservation Plan No. 620190100.
    a) The Applicant must schedule the required site inspections by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.

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

b) Prior to any demolition, clearing, grading or construction on the project site, the Applicant must record, in the Montgomery County Land Records, an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the reforestation requirement for a total of 0.47 acres of mitigation credit. Any offsite requirement must be met by purchasing credits from a mitigation bank within the Cabin John Creek watershed. If there are no mitigation bank credits available within the Cabin John Creek watershed, credits can be acquired from any mitigation bank in the County.
c) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.
d) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
e) The Applicant must plant 21 inches of mitigation plantings in the form of seven (7) 3-inch caliper native canopy trees to mitigate for the loss of specimen trees as shown on the Final Forest Conservation Plan.
f) The mitigation plantings associated with each lot, as shown on the Final Forest Conservation Plan, must be installed within the first growing season after receiving a Use and Occupancy Permit for the respective lot(s).

10. The record plat must show Building Restriction Lines as reflected on the Certified Administrative 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 Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for up to 3 lots for detached houses permitted in any residential zone.*

a. The lots are approved for the standard method of development;

The lots were submitted and are approved for standard method development in the R-200 zone.

b. Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat;

The lots will not be served by wells or septic areas, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

c. Any required road dedications and associated public utility easements are shown on the plat and the applicant provides any required improvements;

Longwood Drive is designated as a Secondary Residential roadway with an existing 50-foot right-of-way, no dedication is required as part of this Application. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat as well as a common ingress/egress easement over the shared driveway.

d. The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat; and

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

Local Area Transportation Review (LATR)
The Project generates fewer than three (3) peak hour trips and is considered to have a *de minimis* impact on the transportation network. As a result, the Application is not subject to the Local Area Transportation Review (LATR). Based on the Project's *de minimis* impact, provision of a new sidewalk, and consolidation of site access points to a single shared driveway, vehicle and pedestrian access for the administrative subdivision will be adequate.

School Adequacy
The Property is served by Burning Tree Elementary School, Pyle Middle School, and Whitman High School. With a net of one new single-family-detached dwelling unit, the Application falls within the *de minimis* (three units or less) exemption. Therefore, the Project is not subject to testing for its estimated impact on school enrollment.

Other Public Facilities and Services
The Property is currently served by public water and sewer, classified in the S-1 and W-1 categories, and will be adequate to serve the proposed subdivision. Dry utilities including electricity, gas, and telephone are also available to the Property. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect.

e. Forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.

The Subject Property is subject to Chapter 22A of the County Code. The Planning Board finds that, as conditioned, the Preliminary/Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law as discussed further below.

The Application has been conditioned to receive a revised Stormwater Management Concept Approval prior to recordation of plat to satisfy the requirements of Chapter 19 for Stormwater Management.

There are no additional environmental protection requirements to be met.

2. *The Administrative Subdivision Plan meets the technical review requirements of Chapter 50, Section 4.3.*

A. 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.

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

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The approved subdivision is within an existing residential neighborhood with an established street grid. The Application is not proposing to create any new residential blocks.

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

The Administrative Subdivision Plan meets all applicable sections of the Subdivision Code. The lot sizes, widths, shapes, and orientations are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, the existing lot pattern of surrounding properties, and for the building type (single-family detached dwelling units) contemplated for the Property.

Properties in the vicinity range from just over 20,000 square feet in size to almost 40,000 square feet. While the predominant shape of the lots in the vicinity are rectangular, there are several other irregularly angled lots and four flag lots. The proposed lots meet the minimum

development standards for the R-200 zone in terms of size, street frontage, setbacks, and meet the infill development standards for lot coverage. Just to the north of this development application is a flag lot approximately 23,000 square feet in size with a shared driveway access and street frontage, very similar to the layout of this Application. Therefore, the lot design is appropriate for the development and use contemplated.

Neighbors testified that the Planning Board should look at previous cases in the neighborhood where flag lots were proposed and denied under the old resubdivision provision in the previous Subdivision Regulations. The Neighbors asserted that the past cases show that a flag lot is not appropriate for the location of the subdivision. The Planning Board listened to the testimony and stated that the old law is not applicable to this Application. There is no grandfathering provision, nor is there resubdivision criteria in the current and applicable law. The Planning Board emphasized that the current law allows for a determination of whether the lots are appropriate for their location in the existing neighborhood. The Board took this into account and need not look back at old cases that were decided under laws that are no longer in effect. The Board found that the Application meets the Subdivision Regulations' layout requirements and that the lots' size, width, shape, orientation, and density are appropriate for the subdivision.

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

The Site was reviewed for compliance with Section 50.4.3.D, "Public Sites and Adequate Public Facilities," of the Subdivision Regulations. There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

4. *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 R-200 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and width. The side setbacks for the lots exceed the requirements of the R-200 zone and can reasonably accommodate two single-family detached dwellings on each lot.

B. *The Administrative Subdivision Plan substantially conforms to the Master Plan.*

The Property is located in the "Mid-Bethesda – Northern B-CC" area of the 1990 *Bethesda-Chevy Chase Master Plan* which is described as a mature, stable area, predominantly zoned R-60, R-90 and R-200 in the westernmost portion. A major goal of the Master Plan is to protect the high quality of life, the existing residential character, and the natural environment of the area. The Master Plan achieved this by reconfirming the existing zoning throughout the Mid-Bethesda – Northern B-CC area. The Subdivision design is similar in shape and size to existing residential flag lots in the vicinity and provides two residential lots with a detached house on each lot meeting the development standards of the R-200 zone, in keeping with the existing residential character. The Application complies with the Forest Conservation requirements to protect and enhance the natural environment on the Property, therefore the Application substantially conforms to the Master Plan.

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

As discussed above, public facilities will be adequate to support and service the area of the subdivision.

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

1. Forest Conservation

a. Environmental Guidelines
The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420190320 for this Property was approved on October 23, 2018. The NRI/FSD identifies 0.50 acres of forest on the Property. There are no other environmental features on the Property or adjacent to the Property. There are no rare, threatened, or endangered species within the boundaries of the proposed project.

b. Forest Conservation Plan
A Final Forest Conservation Plan (FFCP) 620190100 was submitted as part of the Application. The Property is in the R-200 zone and shows that the entire 0.50 acres of onsite forest will be removed. The Applicant is required to plant 0.47-acres of forest to meet the Forest Conservation Law. The Application will meet this requirement offsite in a forest conservation mitigation bank.

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

2. Forest Conservation Variance

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

This Application will require the removal of six (6), and CRZ impact to four (4), Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Applicant submitted a variance request in a letter dated August 14, 2019 (Revised October 24, 2019). The Applicant will impact four (4) trees and remove six (6) trees that are 30 inches or greater DBH, that is considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Specimen Tree Impacts

TREE #	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	% CRZ IMPACTED	Status
ST-3	Liriodendron tulipifera	Tulip Poplar	38.0"	Moderate	41%	**Remove**
ST-4	Liriodendron tulipifera	Tulip Poplar	40.0"	Moderate	50%	**Remove**
ST-6	Liriodendron tulipifera	Tulip Poplar	35.1"	Poor	20%	Retain
ST-8	Quercus rubra	N. Red Oak	36.6"	Moderate	79%	**Remove**
ST-9	Liriodendron tulipifera	Tulip Poplar	36.5"	Moderate-Poor	79%	**Remove**
ST-11	Liriodendron tulipifera	Tulip Poplar	36.0"	Poor	8%	Retain
ST-14	Liriodendron tulipifera	Tulip Poplar	36.0"	Moderate	6%	Retain
ST-15	Platanus occidentalis	Sycamore	35.7"	Moderate	26%	Retain
ST-19	Liriodendron tulipifera	Tulip Poplar	38.0"	Moderate	100%	**Remove**
ST-20	Liriodendron	Tulip Poplar	45.7"	Moderate	37%	**Remove**

tulipifera

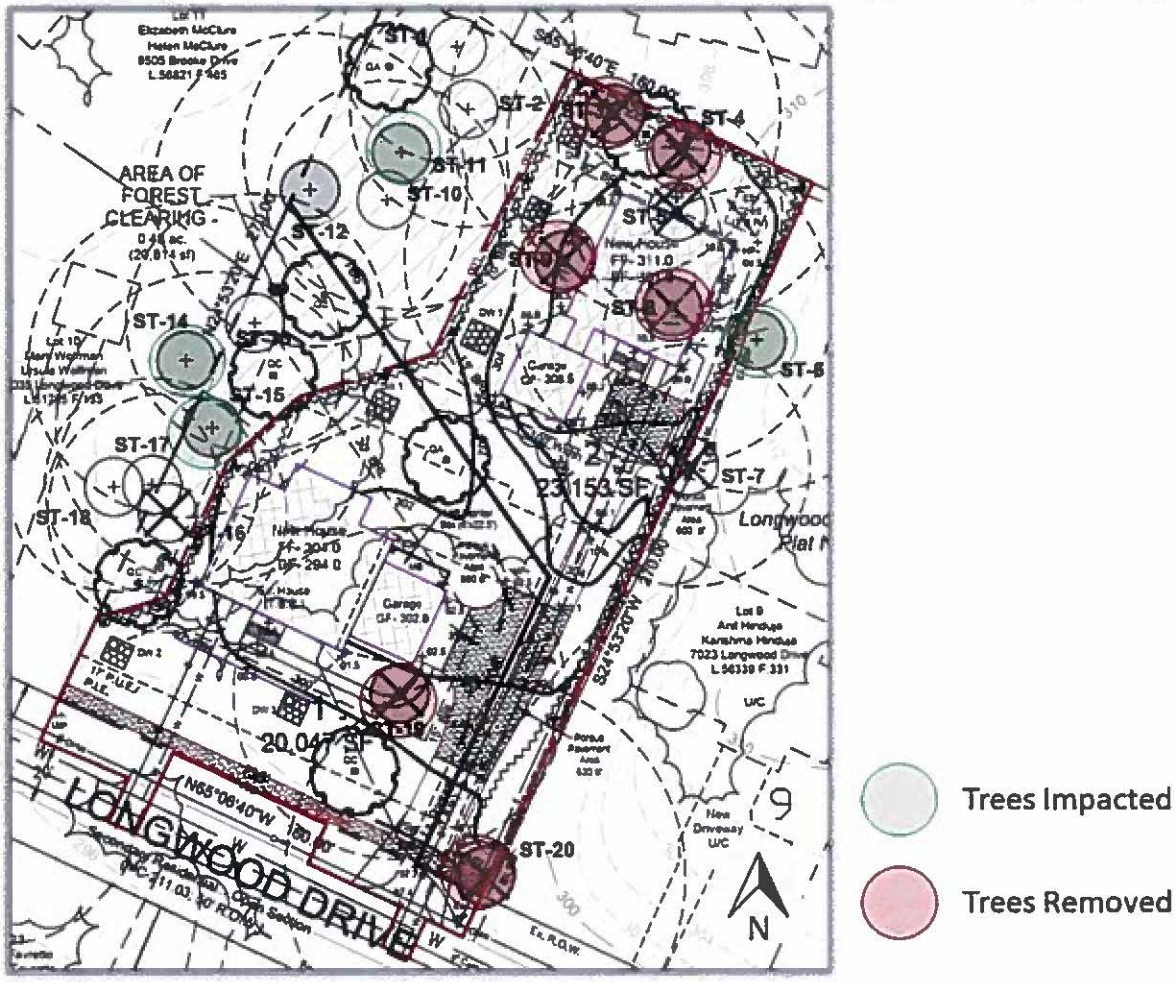

Figure 1: Impacted and Removed Variance Trees

Unwarranted Hardship Basis

Per Section 22A-21, a Variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in an unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the need for a Variance is based upon existing site conditions and compliance with necessary lot design and infrastructure elements that are required of any preliminary plan application, such that if disturbance or removal of Protected Trees pursuant to Chapter 22A is not allowed in this case, the Applicant would suffer unwarranted hardship.

The Property contains a combination of unique site characteristics including small property size, several large and Protected trees, and

Protected tree distribution throughout the site. These site characteristics, when mixed with regulatory standards required for development such as site improvements, public utility easements, stormwater management, and front, rear, and side setbacks, make the Property difficult to develop and impossible to do so reasonably without impacts to Variance trees.

The tree impacts and removals associated with the Application are within the buildable area established by setbacks, and the Applicant has minimized impacts to the significant treed area located in the northwestern corner of the site by imposing more restrictive setbacks than required by the R-200 zone. The location of the trees, compliance with lot design, as well as provision of public facilities typically associated with the subdivision process result in unavoidable impacts to Protected trees. Not granting this request would deny the Applicant reasonable and significant use of the Property.

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

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

   Granting the Variance will not confer a special privilege on the Applicant because the disturbance to the Protected Trees (i.e., impacts to 4 specimen trees and removal of 6 specimen trees) is due to the reasonable development of the Property and is necessitated by the location of the trees and compliance with lot design as well as provision of public facilities typically associated with the subdivision process. The tree impacts and removals associated with disturbance on the Site are within the buildable area established by setbacks and by Applicant's efforts to minimize impacts to the significant treed area located in the northwestern corner of the site. Granting a Variance to allow land disturbance within the buildable area of the Subject Property is not unique to this Applicant.

b. *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. The Variance is based on development allowed under the existing zoning and required by existing site conditions and necessary design requirements of this Application. The Variance can be granted under this condition so long as the impacts are avoided or minimized, and required mitigation is

provided. The Applicant has incorporated design changes to reduce the impact of tree disturbance and removal such as relocating and reducing the size of the potential building footprint and providing a more restrictive building setback. Additionally, mitigation is being provided for the unavoidable disturbance to the trees.

c. *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 a result of the existing conditions on the Subject Property and not as a result of land or building use on a neighboring property.

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

The Variance does not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed or impacted are not located within a stream buffer, wetland or special protection area. A total of seven (7) trees will be planted on-site as mitigation for removal of Protected Trees not located within existing forest to be cleared as required. While newly planted mitigation trees are obviously smaller in size than trees being removed, they will grow into larger trees over a lifespan of 30+ years providing water quality protection throughout that time. The Protected Trees that are impacted but not removed will continue to provide the same water quality protection.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. There are six (6) Protected Trees proposed for removal in this variance request. Four trees are located within areas of forest; the forest conservation worksheet already provides mitigation for forest clearing so no additional mitigation is recommended for these trees. There are two trees, labelled ST-19 and ST-20, located outside of forested areas and not covered by the mitigation provided from the forest conservation worksheet. Therefore, the Board approved replacement of Protected Trees at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 83.7 caliper inches of Protected Trees proposed for removal (outside of forested areas), the Applicant will provide mitigation planting of 21 caliper inches of trees, with a minimum size of 3" DBH on the site.

While the mitigation plantings will not be as large as the trees lost, they will provide some immediate canopy and ultimately replace the canopy lost by the removal of these trees. No mitigation is required for Protected Trees impacted but retained.

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

In conjunction with the approved development on the Subject Property, the Applicant received approval of a Stormwater Management Concept Plan for an earlier iteration of the proposed lot design. The Application before the Planning Board has further improved the lot design that had been found to be acceptable by MCDPS and is conditioned to receive approval of a revised Stormwater Management Concept Plan for the lot design prior to recordation of the plat. As conditioned, the Application satisfies the requirements of Chapter 19 for Stormwater Management.

BE IT FURTHER RESOLVED that this Administrative Subdivision Plan will remain valid for ~~sixty (60)~~ thirty-six (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 Administrative Subdivision 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 February 6, 2020 ~~(~~which is the date that the original~~this~~ Resolution was~~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 Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, March 5, 2020, in Silver Spring, Maryland.

Casey Anderson, Chair
Montgomery County Planning Board