



Ingleside, Preliminary Plan Amendment No. 12014014A

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Completed: 04/2/2020

Description

Ingleside, Preliminary Plan Amendment No. 12014014A:

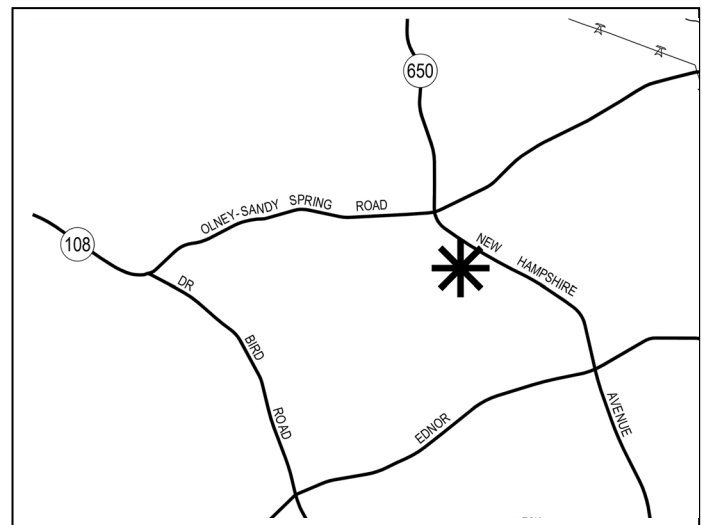
Application to remove Preliminary Plan condition of approval no. 4 requiring the construction of a 10-ft shared use path along the frontage of the Subject Property; located at 17720 New Hampshire Avenue, approximately 1/3 mile south of Ashton Village; 6 acres; R-200 zone; 1998 Sandy Spring/Ashton Master Plan.

Recommendation – Denial

Applicant: Jacqueline and Daniel McGroarty

Submittal Date: 12/23/2019

Review Basis: Chapter 50



Summary

- The Application proposes to amend Condition 4 of the Preliminary Plan that required the construction of a shared use path along the property frontage
- The application proposes to provide a \$10,000 contribution for off-site public bike improvements in-lieu of construction of the conditioned shared use path
- Staff does not find that the proposed contribution complies with Master Plan recommendations as per Section 50-35(l) of the Subdivision Ordinance in effect prior to February 2017.

EXECUTIVE SUMMARY

Preliminary Plan No. 12014014A: The Application is to remedy a Notice of Violation issued by the Planning Department to the Applicant on May 23, 2019 (Attachment 1). The violation is for the failure to meet Condition 4 of approved Preliminary Plan 120140140 (Attachment 2), which required the construction of a shared-use path (SUP) along the frontage of the Subject Property prior to issuance of a permit for use and occupancy. The original preliminary plan (No. 120140140) was reviewed and approved pursuant to the Subdivision Ordinance in effect prior to February 2017. Section 50-35(l) of that Ordinance requires that the Planning Board consider each applicable master plan, sector plan and urban renewal plan in determining the acceptability of an application. The plan drawings initially submitted with the original application showed an off-road shared use path in a location acceptable to staff and it continued to be shown on the certified preliminary plan drawings after Planning Board approval. Condition No. 4 of the Resolution for the original preliminary plan was required to ensure the path would be built and to conform with the 1998 Sandy Spring - Ashton Master Plan, which recommended an off-road Class I bike path along New Hampshire Avenue (MD 650) and makes numerous recommendations for proper pedestrian and bicycle facilities for properties in close proximity to the two village centers in the master plan area. The Condition also ensured conformance with the recommendation for an off-road shared use path (SUP) by the 2005 Countywide Bikeways Functional Master Plan, which recommended a SUP along the west side of New Hampshire Avenue a portion of which is located along the frontage of the Subject Property.

Subsequent to the construction of the homes, the Applicant submitted a design for the SUP for review by the Maryland State Highway Administration, the agency in control of the right-of-way (ROW) fronting the Subject Property. In a letter to the Applicant dated January 24, 2019 (Attachment 3), SHA denied the request for a permit to construct the SUP in the ROW. SHA states this denial is based on the lack of connection to nearby bike or pedestrian facilities along with the inability to properly accommodate required stormwater management. The Applicant believes that they are not in a position to construct the SUP and have requested this Preliminary Plan amendment to seek removal of Condition No. 4.

The 2018 Bicycle Master Plan, which supersedes the 2005 Countywide Bikeways Functional Master Plan, also reiterates the recommendation for a 10-ft wide shared-use side path along the west side of New Hampshire Avenue along the frontage of the Subject Property. Supporting this recommendation is the strong endorsement of Vision Zero shared by the Planning Department, County Council, and County Executive to improve pedestrian and bicyclist safety. The location of the Subject Property lies within $\frac{1}{4}$ mile walkshed of Ashton Village Center, which hosts a collection of neighborhood retail, and within $\frac{3}{4}$ of a mile to Sherwood High School; this area is the focus of the ongoing Ashton Village Center Sector Plan which will recommend improvements to make the Village Center a safe, fully walkable and bikeable community. The Subject Property fronts New Hampshire Avenue, which provides the only connection to these locations from the south; this section nevertheless currently lacks adequate bike and pedestrian infrastructure. A Metro bus stop served by the Z2 route is additionally located approximately 300 ft. to the north. Last, feedback from residents in the Ashton community consistently requests additional pedestrian and bike improvements in this area. Together, this background presents a clear need for immediate implementation of bike and pedestrian infrastructure as was required by the previously approved Condition 4.

Staff disagrees with the determination by SHA that a SUP is infeasible in this location. However, Staff recognizes the authority SHA holds over the use of State ROW. As a result, Staff also recognizes that the denial of access for construction within the SHA ROW presents a significant burden in achieving full compliance with the Bicycle Master Plan and the Sandy Spring – Ashton Master Plan. As set by precedent,

in similar cases in which master plan recommended bike facilities are determined to be infeasible to be accommodated as part of a development plan, the Board has sought to meet the spirit and goals of the applicable master plan recommendations by means of either comparable off-site improvements, via fees in-lieu of construction, or some combination of both in order to substantially conform to the relevant master plan(s). Staff recommended that the Applicant pursue these approaches.

The Applicant has responded to Staff's request with an offer of a \$10,000 in-lieu contribution as detailed in an email communication as part of the Statement of Justification (Attachment 4). As explained in the findings, this sum does not fully cover the cost of construction for the SUP, and therefore, does not substantially conform to the 2005 Countywide Bikeways Functional Master Plan or Sandy Spring – Ashton Master Plan.

SECTION 1 – RECOMMENDATION

Staff recommends **denial** of the Preliminary Plan Amendment

SECTION 2 – SITE LOCATION AND HISTORY

Site Location

The Subject Property is 6 acres subdivided into 3 lots (one for the existing house and 2 lots for new homes) located on the south side of New Hampshire Avenue approximately 1/3 mile southeast of the intersection of MD 108 and MD 650 (Ashton, MD) ("Subject Property") (Figure 1). The Subject Property is zoned R-200 in the 1998 *Sandy Spring/Ashton Master Plan* ("Master Plan"). The Subject Property now has three existing detached single-family homes, consistent with Preliminary Plan No. 120140140.

Site Vicinity

Surrounding the Property on all sides is detached single family housing. R-200 zoning abuts the Property on the west, east, and south with RE-2 to the west and south beyond the adjacent R-200 zone. Across New Hampshire Avenue to the north are additional single-family residential homes in the Rural Cluster zone.

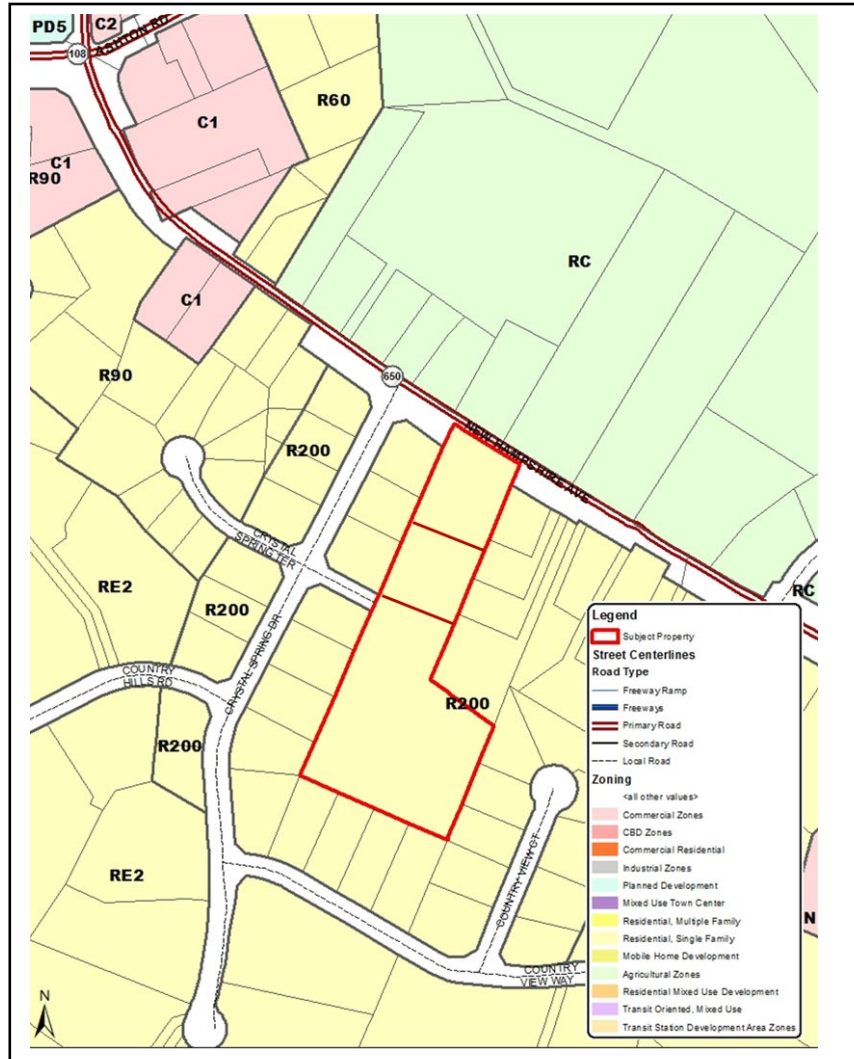


Figure 1 – Zoning and Vicinity Map

History

Preliminary Plan 120140140

The original preliminary plan was approved on 06/03/2015 by Planning Board Resolution No. 15-52 to create 3 lots for 3 single family detached dwellings from a single 6.17-acre property. Approximately 0.17 acres were dedicated as ROW for New Hampshire Avenue as well as for the extension Crystal Spring Terrace approximately in the midpoint of the Subject Property. The Applicant was required to construct the extension of Crystal Spring Terrace as a public street built to tertiary street standards. This condition has been met.

SECTION 3 –PROPOSAL

Proposal

Preliminary Plan No. 12014014A was submitted on 12/23/2019 to amend Condition 4 of the Preliminary Plan. This condition read: "Prior to issuance of the use and occupancy permit for the first new residence, the Applicant must construct a 10-foot shared use path along New Hampshire Avenue as shown on the

Preliminary Plan to be permitted, bonded, and constructed under a Maryland State Highway Administration (“MDSHA”) access permit.” The approved Preliminary Plan, including the conditioned shared use path is shown below:

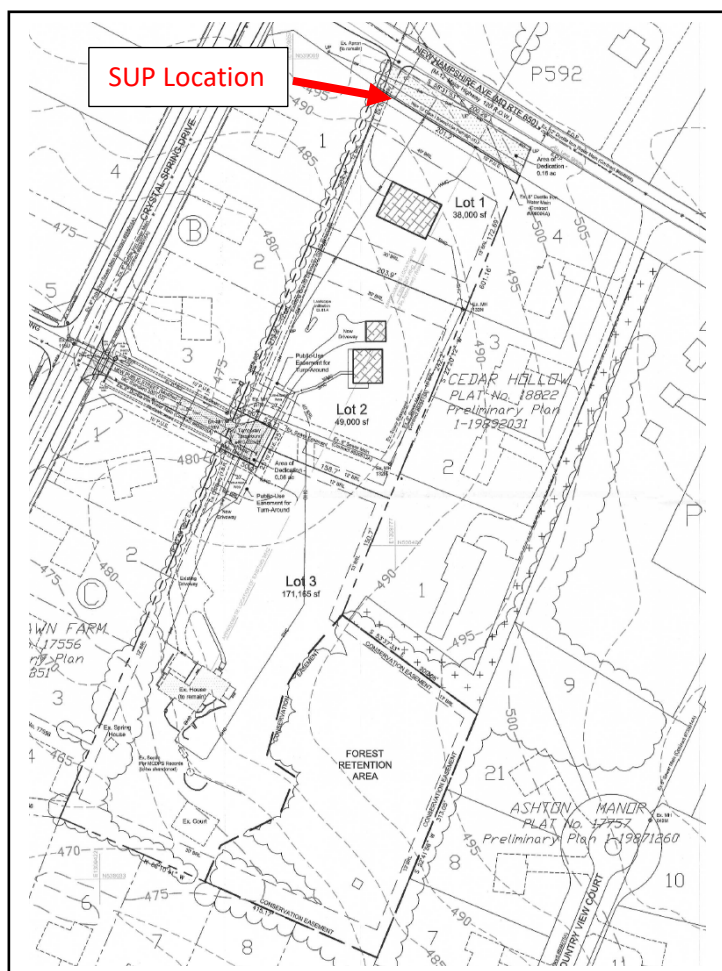


Figure 2 –Preliminary Plan Drawing

The Applicant has completed platting for the 3 lots as well as construction of the 2 approved new dwellings. The Applicant submitted a design for the SUP for review by the Maryland State Highway Administration, the agency in control of the right-of-way (ROW) fronting the Subject Property along New Hampshire Ave (MD 650). In a letter to the Applicant dated January 24, 2019 (Attachment 3), SHA denied the request for a permit to construct the SUP in the ROW. This denial, as stated, is based on the lack of connection to nearby bike or pedestrian facilities along with the inability to properly accommodate required stormwater management.

The Applicant proposes through this Application to instead provide an in-lieu contribution for the purpose of constructing local bicycle improvements in the amount of \$10,000, amending Condition 4. As discussed in email communication (Attachment 4), the Applicant believes this to be an appropriate sum given the significant expenditures for public benefit thus far by the approved development, particularly for the construction of the Crystal Spring Terrace extension. The Applicant additionally contends that the conditions of approval did not provide any insight as to the extent of the cost to be incurred by the Application.

SECTION 4 – ANALYSIS AND FINDINGS, 50.4.2.D

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

The Preliminary Plan Amendment does not substantially conform to the transportation recommendations of the 1998 Sandy Spring - Ashton Master Plan and the 2005 Countywide Bikeways Functional Master Plan

Staff finds that the proposed revision to Condition 4 to provide a \$10,000 contribution in-lieu of construction of the SUP does not substantially conform to the recommendations of either master plan which specifically recommend the construction of a shared use path on New Hampshire Avenue. (See pp. 60-61 Sandy Spring/Ashton Master Plan and pp. 52, Route No. SP-15, within the 2005 Countywide Bikeways Functional Master Plan). This contribution is not based on an approved cost estimate. As set by precedent for similar in-lieu contributions, Planning Staff recommends contributions to be reflective of the full cost of construction, with costs compared to MCDOT county-wide average construction costs, with the sum to be provided to and approved by MCDOT. While this section of bikeway is proposed in SHA ROW, the agency does not have a local funding mechanism to receive in-lieu contributions for local bicycle and pedestrian improvements; instead, MCDOT's local bicycle and pedestrian improvement fund is the standard recipient of in lieu contributions. In consultation with MCDOT Staff, a \$56,000 estimate was provided to the Applicant in late 2019, with a per-linear foot cost of \$277 to be provided to CIP project #507596 for area-wide bike improvements. This estimate is now lower than both internal calculations used for the Bicycle Master Plan as well as ongoing costs for overall countywide projects.

Table 1 – Shared Use Path Cost Estimates

Source	Cost Per Linear Foot	Total Cost (201 Linear Feet)
Applicant's Proposal	\$50	\$10,000
2019 MCDOT Request	\$277	\$56,000
Bicycle Master Plan Internal Calculation (2018 Estimate)	\$280	\$56,280
Current (2020) MCDOT Countywide Bike Path Construction Cost	\$310	\$62,310

Staff has requested the Applicant to alternatively provide a certified third-party engineered cost estimate to be reviewed jointly by Planning and MCDOT Staff; such an estimate has not been provided. Staff cannot find conformance to the Master Plan as the \$10,000 offer fee is significantly less than true cost of construction for the required SUP and no comparable facility has been offered in lieu of the SUP; the offer as provided is unable to cover the provision of a comparable length of path in an area with a noted deficit of bike and pedestrian improvements.

2. *Public Facilities will be adequate to support and service the area of the subdivision*

No new development is proposed through this Application; there will be no impact to existing public facilities. However, Staff reiterates the need for bike and pedestrian improvements along New Hampshire Ave. (MD 650).

a. Roads and Other Transportation Facilities

No new development is proposed through this Application and there are no changes to the existing transportation network; vehicular transportation and access will remain adequate. However, Staff finds there remains a need for bike and pedestrian improvements along New Hampshire Ave. (MD 650). The location of the Subject Property lies within ¼ mile walkshed of Ashton Village Center, which hosts a collection of neighborhood retail, and within ¾ of a mile to Sherwood High School; this area is the focus of the ongoing Ashton Village Center Sector Plan which will recommend improvements to make the Village Center a safe, fully walkable and bikeable community. The Subject Property fronts New Hampshire Avenue, which provides the only connection to these locations from the south; this section nevertheless currently lacks adequate bike and pedestrian infrastructure. A Metro bus stop served by the Z2 route is additionally located approximately 300 ft. to the north. Last, feedback from residents in the Ashton community consistently requests additional pedestrian and bike improvements in this area. Together, this background presents a clear need for immediate implementation of bike and pedestrian infrastructure as was required by Condition 4.

b. Local Area Transportation Review (LATR)

The Application does not propose additional development; this Application will not generate any new trips and is exempt from additional LATR review.

c. Other Public Facilities and Services

The Application does not propose additional development and there are no impacts to any additional public facilities or services.

3. *All Forest Conservation Law, Chapter 22A requirements are satisfied*

a. Forest Conservation Plan

The Application does not propose additional development; however, the removal of the SUP as proposed will result in two trees that were planned to be removed to be saved; additionally, the LOD must be amended to reflect that the path will not be constructed. These changes must be amended on the certified FCP.

SECTION 6 – CITIZEN CORRESPONDENCE AND ISSUES

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the submitted Applications. There has been no community correspondence.

SECTION 7– CONCLUSION

The Application does not substantially conform to the recommendations of the 2005 Countywide Bikeways Functional Master Plan and the 1998 Sandy Spring – Ashton Master. The Application was reviewed by other applicable County agencies and did receive conditional approval from the Montgomery County Department of Transportation; however, it should be noted that this approval is conditioned on the provision of the full sum of the cost of construction for the SUP (Attachment 5), which is not currently provided by the Application. Therefore, staff recommends denial of the Application.

Attachments

Attachment 1 – Notice of Violation Letter

Attachment 2 – MCPB Resolution No. 15-52 for Preliminary Plan 120140140

Attachment 3 – SHA Letter of Denial for Construction Permit

Attachment 4 – Statement of Justification (Initial, Supplemental and Email Communication)

Attachment 5 – Letter from Montgomery County Department of Transportation



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

8787 Georgia Avenue, Silver Spring, Maryland 20910
Development Applications & Regulatory Coordination Division 301.495.4550
www.MontgomeryPlanning.Org

Attachment 1

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND, the undersigned issuer, being duly authorized, states that:

On, May 23, 2019 the recipient of this NOTICE, Mr. and Mrs. McGroarty
Date Recipient's Name

who represents the property owner, (Same)
Property Owner's Name

is notified that a violation of the Montgomery County Zoning Ordinance (Chapter 50-41) exists at the following location: Preliminary Plan 120140140, Ingleside

Plan No. 120140140	Explanation: Failed to construct 10-foot shared use path along New Hampshire Avenue as required by Item No. 4 of the Planning Board Resolution conditions of approval.
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VIOLATION:

	Lighting has been substituted and/or installed in the wrong location
	Impervious Surface has been substituted and/or installed in the wrong location
	Retaining Wall has been substituted and/or installed without approval
	Landscaping has been substituted and/or installed in the wrong location
	Entrance Monument has been installed without approval and/or installed using an unapproved design change
	Recreation Equipment has been substituted and/or installed using an unapproved layout change
	Fencing has been substituted and/or installed in an unapproved location
	Materials have been substituted and/or not installed per the approved specifications

X	Other: Failed to construct 10-foot shared use path along New Hampshire Avenue as required by Item No. 4 of the Planning Board Resolution conditions of approval.
Failure to comply with this NOV by <u>June 21, 2019</u> may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action. Recipient is to call the inspector at <u>301-495-4581</u> when the corrective action is complete. The following corrective action(s) must be performed as directed and within any timeframes specified below:	

X	Construct 10-foot shared use path per the approved Preliminary Plan 120140140 along New Hampshire Avenue.
	Schedule and attend a meeting with staff to determine appropriate corrective action to be performed by a date certain. Failure to complete the corrective action by the date assigned may result in i) issuance of a citation, ii) issuance of a Stop Work Order, and/or iii) issuance of a Notice of Hearing to appear before the Planning Board for appropriate Administrative Action.

MNCPPC
Inspector

David Wigglesworth
Printed Name

David Wigglesworth
Signature

May 23, 2019
Date

RECEIVED BY: Mailed to Mr. and Mrs. McGroarty via certified mail



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

May 23, 2019

Mr. Daniel and Mrs. Jacqueline McGroarty
17720 New Hampshire Avenue
Ashton, MD. 20861

Re: Preliminary Plan 120140140; Ingleside; 10-foot shared use path

Dear Mr. and Mrs. McGroarty:

The Montgomery County Planning Board voted to approve the Application for the Ingleside Preliminary Plan 120140140 on May 28, 2015, subject to certain conditions. Item No. (4) of these conditions states "Prior to issuance of the use and occupancy permit for the first new residence, the Applicant must construct a 10-foot shared use path along New Hampshire Avenue as shown on the Preliminary Plan to be permitted, bonded, and constructed under a Maryland State Highway Administration ("MDSHA") access permit.

An inspection was recently conducted at 17724 New Hampshire Avenue which is adjacent to where the location of the proposed 10' shared use path should be located. The path has not been constructed. Therefore, you are in violation of the approved Preliminary Plan. A Notice of Violation is issued (enclosed) which requires you to comply with Item No. (4) to construct the 10-foot shared use path. Please comply with this notice within (30) days, by June 21, 2019. A failure to comply with the Notice of Violation could result in further enforcement actions.

Please inform this inspector when the 10-foot shared use path is completed. You may contact me at david.wigglesworth@montgomeryplanning.org or at 301-495-4581.

Sincerely,



David Wigglesworth

Sr. Planner

Development Applications & Regulatory Coordination

Enclosures: Notice of Violation, and Resolution pages 1, 2

CC: Josh Kay, M-NCPPC, DARC
Mark Pfefferle, M-NCPPC, Chief DARC



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUN 3 2015

MCPB No.15-52
Preliminary Plan No.120140140
Ingleside
Date of Hearing: May 28, 2015

RESOLUTION

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

WHEREAS, on March 13, 2014, Daniel & Jacqueline McGroarty ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 6.17 acres of land in the R-200 Zone, located on the south side of New Hampshire Avenue approximately 0.20 miles southeast of the intersection of MD 108 and MD 650 (Ashton, MD) at 17720 New Hampshire Avenue ("Subject Property"), in the 1998 Sandy Spring/Ashton Master Plan. ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120140140, Ingleside ("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 May 15, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 28th, 2015, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

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

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120140140 to create three lots on the Subject Property, subject to

Approved as to
Legal Sufficiency

Christina Smith
6787 Georgia Avenue, Silver Spring, Maryland 20910
MNCPPC Legal Department
www.montgomeryplanningboard.org

5/19/15
Phone: 301.495.4605 Fax: 301.495.1320
E-Mail: mcp-chair@mncppc-mc.org

the following conditions:¹

1. This Preliminary Plan is limited to three (3) lots for three residential dwelling units.
2. Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan (PFCP) No. 120140140:
 - a. Prior to Planning Board approval of the record plat, the Applicant must obtain Staff approval of a Final Forest Conservation Plan (FFCP) consistent with the approved Preliminary Forest Conservation Plan and including mitigation for the loss of a specimen tree at a ratio of approximately 1" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper size.
 - b. The Applicant must place a Category I Conservation Easement over approximately 1.5 acres of forest retention as shown on the approved forest conservation plan. The easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records prior to clearing or grading. The liber and folio of the deed must be referenced on the record plat.
 - c. The limits of disturbance shown on the Final Sediment Control Plan must be consistent with the limits of disturbance shown on the FFCP.
 - d. Permanent Category I Conservation Easement signs must be placed along the perimeter of the conservation easement area.
 - e. The Applicant must comply with all tree protection and tree save measures shown on the approved PFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.
3. The Applicant must dedicate, by record plat, the following rights-of-way:
 - a. 60 feet from the centerline along their site frontage on New Hampshire Avenue as shown on the Preliminary Plan.
 - b. 50 feet for the extension of Crystal Spring Terrace as shown on the Preliminary Plan, unless otherwise determined by the Montgomery County Department of Transportation ("MCDOT") to be unnecessary prior to recordation of the plat.
4. Prior to issuance of the use and occupancy permit for the first new residence, the Applicant must construct a 10-foot shared use path along New Hampshire Avenue as shown on the Preliminary Plan to be permitted, bonded, and constructed under a Maryland State Highway Administration ("MDSHA") access permit.

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.

5. The Applicant must construct the extension of Crystal Spring Terrace as a publicly maintained tertiary street within the existing 50-foot right-of-way from Crystal Spring Drive to the Property boundary and extended as temporary "T-type" turnaround located on the Subject Property. The construction within the Crystal Spring Terrace right-of-way must be to MCDOT Road Code Standard MC-2001.03: Tertiary Residential Street Modified. The modification allows for the reduction of right-of-way from 74-feet to 50-feet, no sidewalks, and a reduction in the side ditch area for stormwater management.
6. All existing septic system on the Subject Property must be abandoned in accordance with Montgomery County Department of Permitting Services ("MCDPS") standards. All existing houses on the Subject Property must be connected to public sewer prior to the first Use and Occupancy Certificate for any new residence.
7. The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Services ("MCFRS") approval dated February 3, 2015 and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the approval. These recommendations may be amended by MCFRS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. The Planning Board accepts the recommendations of the MCDOT in a letter dated April 2, 2015 and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
9. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
10. The Planning Board accepts the recommendations of the MDSHA in a letter dated May 1, 2014 except for comments #1 and #4. Comments #2 and #3 from the SHA letter are incorporated as conditions of the Preliminary Plan approval. The Applicant must comply with the recommendations associated with comments #2 and #3 as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 24, 2015) and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
12. 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 building permits. 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 the Planning Board's approval.

13. Record plat must show necessary easements.
14. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

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 Preliminary Plan substantially conforms to the 1998 Sandy Spring/Ashton Master Plan.*

The Planning Board finds the Application complies with the recommendations of the Master Plan. The Master Plan defines and discusses the "New Hampshire Avenue" area, which includes the Subject Property. The Master Plan recommends maintaining the existing zones for land straddling New Hampshire Avenue. The Master Plan strives to preserve the existing rural character of the remaining rural road character (Page 52). The Master Plan seeks to preserve rural open space where it exists along New Hampshire Avenue, orient new homes to the street, maintain vegetated edges where appropriate, and integrate pedestrian and bicycle paths in ways that can enhance rural character (Page 43-45).

The Application places one lot along New Hampshire Avenue, to allow a new home to face New Hampshire Avenue in keeping with the vision of the Master Plan. The Application maintains existing trees along the Subject Property frontage and utilizes the existing driveway location without any widening of the driveway pavement in an attempt to preserve existing conditions and maintain rural character. The Application also shows construction of a shared use path (SP-15) on New Hampshire Avenue in

conformance with the Master Plan and the Countywide Bikeways Functional Master Plan of 2005.

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

Site Access, Parking, and Public Transportation

The MDSHA recommends approval of the Application with the existing driveway entrance remaining even though its May 1, 2014 letter states that the driveway must be removed if access to all new lots is provided to Crystal Spring Drive. Since the new lot fronting New Hampshire Avenue does not have access to Crystal Spring Terrace, access must be provided to New Hampshire Avenue. Thus, MDSHA is willing to allow Lot 1, as shown on the Preliminary Plan, to maintain the driveway connection to New Hampshire Avenue. The existing house on proposed Lot 3 and the new house on proposed Lot 2 will have access via driveways to Crystal Spring Terrace. Sufficient parking will be provided on the driveways of each house and/or in garages. With the construction of the new terminus for Crystal Spring Terrace, access for the 3 new lots will be adequate.

The Washington Metropolitan Area Transit Authority route Z2 provides bus service in the area along New Hampshire Avenue. Route Z2 connects the Olney area to Silver Spring Metrorail Station with service every 30 minutes during the morning and evening peak commuting periods Monday through Friday. The closest southbound bus station is located on New Hampshire Avenue at Tree Lawn Drive approximately 600 feet to the south of the site. The closest northbound bus stop is located on New Hampshire Avenue at Crystal Spring Drive approximately 100 feet to the north of the site. Local public transportation is available to serve the Subject Property.

Local Area Transportation Review (LATR)

As conditioned, the Preliminary Plan for the three lots does not trigger LATR since the two new homes only generate two additional trips in the AM and PM peak hour. The threshold for an LATR review, according to the *LATR & TPAR Guidelines*, is 30 net new additional trips.

Transportation Policy Area Review (TPAR)

The Subject Property is located in the Rural East Policy Area. According to the 2012-2016 *Subdivision Staging Policy*, the Rural East Area is exempt from the roadway test and transit test; therefore, no TPAR payment is required.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the proposed lots. The Subject Property is located in the W-1/S-1 water and sewer service categories and, therefore will be utilizing existing water and sewer infrastructure. The Application was also reviewed by MCFRS, and was approved on February 3, 2015. 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 FY 2015 Growth Policy Resolution currently in effect. The Application is located in the Sherwood High School cluster, which is not identified as a school moratorium area; and is not subject to a School Facilities Payment.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application complies with all applicable sections within the Montgomery County Code, Chapter 50, the Subdivision Regulations. The lot size, width, shape and orientation are appropriate for the subdivision given the intended use and guidance from the Master Plan. The lots meet all the dimensional requirements for area, frontage, and width, and new homes can meet the setbacks in that zone.

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

A. Forest Conservation

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

The Application meets all requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420141100 for the Subject Property was approved on February 7, 2014. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Property contains 1.5 acres of forest and does contain trees greater than 24" DBH. The topography is generally flat and there are no streams, wetlands, or environmental buffers on the Subject Property.

The Subject Property is within the Northwest Branch watershed; a Use IV watershed. The Countywide Stream Protection Strategy rates streams in this section of the watershed as overall fair condition.

The Forest Conservation Plan (FCP) proposes no forest clearing and 1.5 acres of forest retention. The Subject Property is 6.17 acres, with the off-site disturbance necessary to construct the public road extension for Crystal Spring Terrace. The net tract area for purposes of forest conservation is 6.42 acres.

B. Forest Conservation Variance

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

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

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

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

The use of the Subject Property for new homes is permitted by the R-200 zone. The current lot design meets zoning requirements for building setbacks. Development of the Subject Property for this use will necessarily impact the Specimen Trees and cannot be reasonably avoided. The granting of this Variance is not unique to this Applicant and does not provide special privileges or benefits that would not be available to any other applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The configuration of the Subject Property, regulatory requirements, and the location of the Specimen Trees are not the result of actions by the Applicant. There are no feasible options to reconfigure lot design and house locations to avoid all impacts to the Specimen Trees.

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

The requested variance is not related in any way to a condition on an adjacent, neighboring property.

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

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Specimen Trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A stormwater management concept plan approval has been approved by MCDPS.

Mitigation for the Variance is at a rate that approximates the form and function of the tree removed. Thus, the required mitigation is to occur at a ratio of approximately 1" caliper for every 4" DBH removed, using trees that are a minimum of 3" caliper size.

5. *All stormwater management requirements shall be met as provided in Chapter 19, Article II, title "stormwater management", Section 19-20 through 19-35.*

The MCDPS Stormwater Management Section accepted a stormwater management concept for the Application on March 24, 2015. The stormwater management concept consists of a combination of drywells, a micro infiltration trench, and landscape infiltration on the lots. The new public street will utilize bioswales located in the right-of-way. The Application complies with Chapter 19 of the County Code regarding stormwater management.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 JUN 3 2015 (which is the date that this Resolution is mailed to all parties of record); and

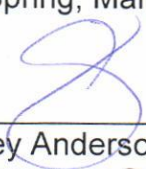
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Dreyfuss, seconded by Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor at its regular meeting held on Thursday, May 28, 2015, in Silver Spring, Maryland..



Casey Anderson, Chair
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AENUE
4TH FLOOR
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY
MCDPS-ZONING
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON
MPDU MANAGER, DHCA
100 MAYLAND AVENUE
4TH FLOOR
ROCKVILLE, MD 20850

DAVID MCKEE
BENNING & ASSOCIATES, INC.
8933 SHADY GROVE COURT
GAITHERSBURG, MD 20877

MICHELE COBRERA
C/O 17720 NEW HAMPSHIRE AVENUE
ASHTON, MD 20861

MR. GREG LECK
MCDOT
100 EDISON PARK DRIVE
4TH FLOOR
GAITHERSBURG, MD 20878

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
355 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ALAN SOUKUP
MCDDEP-WATER RESOURCE
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

DAVID GARDNER
LAW OFFICES OF DAVID C. GARDNER
600 JEFFERSON PLAZA
#308
ROCKVILLE, MD 20852

MR. RICHARD BRUSH, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850

DANIEL MCGROARTY
17720 NEW HANPSHIRE AVENUE
ASHTON, MD 20861

JACQUILINE MCGROARTY
17720 NEW HANPSHIRE AVENUE
ASHTON, MD 20861



Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

January 24, 2019

Mr. Eric B. Tidd, P.E.
CAS Engineering
10 South Bentz Street
Frederick Maryland 21701

Dear Mr. Tidd,

The Maryland Department of Transportation State Highway Administration (MDOTSHA) received your letter requesting design input related to the proposed Ingleside development – 14APMO013XX located on New Hampshire Avenue (MD 650) (Mile Point 13.31) in Montgomery County. MDOTSHA has reviewed your request and after subsequent internal discussions, the MDOTSHA cannot permit the construction of the proposed shared-use path (SUP) along your client's frontage at this time.

As with sidewalk construction, there should be logical termini for the SUP. Currently on MD 650, there is a large disconnection between the shared use path network, 1,050-foot north of the subject property and another disconnection 200-foot section south of the subject property. There would be no connectivity to the SUP if it were to be constructed, and the MDOTSHA cannot compel your client to construct the SUP across the frontages of the adjacent properties in order to tie into existing paths to the north or south. Creating gaps in the SUP would give a false sense of safety to pedestrians.

In addition to the disconnection issue, in order to build this SUP, the homeowner would have to work around the critical root zone (CRZ) for the mature Elm and Maple trees, which limits the area for proper onsite stormwater management. Moreover, the current slopes of 10-12% are too steep to meet ESD facility requirements. MDOTSHA cannot permit a project without the required stormwater management.

With regard to access, only one access point to MD 650 will be permitted for this property. Since the existing access point is currently being used, no new access points will be permitted. The MDOTSHA would be willing to consider permitting additional access points and the construction of this section of the SUP, in conjunction with a corridor project that addresses both the pedestrian connectivity and stormwater management concerns already discussed.

Mr. Eric B. Tidd, P.E.
SHA Tracking No.: 14APMO013XX
Page 2 of 2
January 24, 2019

If you have any questions or require additional information please contact Mr. Kwesi Woodroffe at 301-513-7347, by using our toll free number (in Maryland only) at 1-800-749-0737 (x7347), or via email at kwoodroffe@sha.state.md.us.

Sincerely,


Andre Futrell
District Engineer

AF/ kw

MCPB No.15-52
Preliminary Plan No.120140140

LETTER OF JUSTIFICATION 12/3/19

TO: MONTGOMERY COUNTY PLANNING BOARD

FROM: JACQUELINE & DANIEL MCGROARTY, Montgomery County residents since 1997.

RE: REQUEST TO HAVE THE BIKE PATH REQUIREMENT REMOVED FROM THE "PRELIMINARY PLAN" AS IT HAS BEEN DETERMINED THAT THE BIKE PATH CANNOT BE CONSTRUCTED.

A "Resolution" was passed by this Planning Board on June 3, 2015. This Resolution approved and refers to a "Preliminary Plan" that was submitted for the subdivision of our property. As part of the Preliminary Plan, we were required to construct a 10' – foot shared use path (a.k.a. "bike path"). However, since then and after conducting a lengthy review of the bike path plan that we submitted, the State (MSHA) recently determined that the bike path should not be built for several reasons (including pedestrian safety) and has denied the request for a permit to have it constructed. All other conditions under the plan have been satisfied and we have paid out of pocket over \$300,000 for/towards County improvements in connection with the plan.

All parties recognize that any attempts to enforce the construction of this bike path would be futile given the State's position and findings. As a result, to meet compliance with the Resolution, we are respectfully requesting that the condition be officially removed so that our plan can be deemed satisfied and closed. For these reasons, we are submitting this application and letter of justification.

Background

My husband and I sold our home in Chevy Chase in October 2013 looking for a more peaceful and remote area to reside, where our oldest daughter and family (our all-important grandchildren) could also live. We fell in love with the historical Ingleside property, which was approximately 7 acres, and purchased the property at the time we sold our prior home. The land allowed enough room for our daughter and her husband to build a home (on approximately 1 acre), as well as allow for another part of the property to be used for one of our other children.

Prior to purchasing the property, we were told that the land could be subdivided for these purposes. While we were told and shown how our property could be subdivided into many more lots, we only wanted to subdivide the property to give some land to our children. We wanted to otherwise preserve the rural feel of Ingleside as much as possible.

Unfortunately, while we were told we could subdivide the land, we were never advised of the issues and demands that would be required of us to subdivide this particular property...not by the County, the engineers or our realtor. That is another matter, which I will spare the Board.

After a very emotional and financially stressful process, we finally reached a resolution with the County to subdivide the lot. A public hearing was set on May 28, 2015 and the attached Resolution was passed. Even then, when we agreed to the provisions of the Resolution (and the "Preliminary Plan"), we still had NO IDEA of the expense, process and financial/emotional hardship it would cause over the following years. For example, it took me 2 years and reaching out to 8 different road builders to find

someone willing to take on this 200' road – most contractors qualified to build a County road (which is what we were required to build) would not take on our project. What I learned was that no one wanted our project because the size wasn't worth their trouble, particularly given the type of machinery that needed to be used.

The entire process has been emotionally draining; I was forced to hire road builders, engineers, surveyors, bond companies, sewer contractors, etc., with very little guidance and no understanding of the industry. But we were stuck and I had to keep putting one foot forward to get the project done since I had no other option – this was our home, our retirement.

It is now 6 years later, and I have met all the conditions of the Resolution that I could possibly satisfy. In doing so, aside from the time and toll it took, we have also suffered financially. In sum, we had to pay for the following:

• Spend on	J & A Construction	\$154,100
• Spend on	Planning, Engineering, Survey, Plan Review & Permit Fees	\$79,000
• Spend on	Landscape repair	2,195
• Spend on	MCCPP (additional permits and review costs)	6,500
• Spend on	Require demolition of bathroom for sewer plan	900
• Spend on	Gardner Law Firm	13,400
• Spend on	Alliant Bond Company	2,289
• Spend on	Reliable Plbg (sewer)	20,275
• Spend on	JAS Engineer (other fee incl.in LP	3,940
• Spend on	Goode Survey	5,290
• Spend on	Geo Lab	2,389
• Spend on	WSSC	10,899
• Spend on	Homestead Gardens	750
• Spend on	MCPPC & Cty addl.permits	8,100
• Spend on	CAS Engineering (bike path plans etc)	6,356

TOTAL OUT OF POCKET COSTS TO US **\$ 316,383**

(these do not include any of the costs that my daughter and her husband had to pay to build their home on the property)

In order to cover these costs, we were forced to:

- Take HOME EQUITY LOAN FOR \$ 75,000
- SELL THE FRONT LOT** 169,000
- Incur substantial CREDIT CARD DEBT to make up the difference to cover the balance

***This lot was supposed to be the land for another one of our children, but we had no choice but to sell it to cover a portion of the unanticipated costs listed above.*

In addition, the value of our home has dropped from \$900,000 to \$780,000. An additional loss to us of \$120,000.

BIKE PATH CONDITION

As mentioned above, we have satisfied all conditions to the Resolution. The only item remaining is the bike path. The Resolution, however, merely states:

Prior to issuance of the use and occupancy permit for the first new residence, the Applicant must construct a 10' – foot shared use path along New Hampshire Avenue as shown on the Preliminary Plan to be permitted, bonded and constructed under a Maryland State Highway Administration access permit.

Since the Resolution, however, MSHA has made it clear that it will not issue a permit to build the bike path. There are also no plans to make any changes to New Hampshire Avenue in the foreseeable future to justify keeping this requirement in the resolution. Councilwoman Navarro's office confirmed this as well.

As a result of the State's decision, we recently attended a meeting on November 6, 2019 at Councilmember Navarro's offices with Craig Wilson, Roland Ikheola, and County heads from Park and Planning and Transportation. At that meeting, Mr. Kronenberg (who was in attendance) stated that Park and Planning did not have the authority to waive a condition of approval and the Department of Transportation also said that is it not in their jurisdiction. So it was determined that the best and only course of action was for us to file this application for an amendment.

For these reasons, we are filing this application to have the condition of the bike path be officially removed from the Resolution so that this can be finally resolved and we can move on.

My husband and I are both over 60+ years old and have paid County taxes for over 22 years, and we never expected to spend the last 6 years dealing with all these financial, emotional hardships and all these adversarial relationships with many of the County staff.

This is personal for us – it is the future for us and our family. We have not mentioned this before, but for the last 10 years our family has also been dealing with an adult daughter, who suffers from mental health issues and she will always have health care costs for ongoing therapy and living expenses that we must pay. This is also why we moved somewhere more remote and quieter; a place that seemed ideal for us to be able to provide for her and for us, and to be near our grandchildren and help care for them as needed. But there is no question that the costs we have incurred as a result of the subdivision of our property has severely strained the resources we had saved to continue to look after our daughter and to cover our living expenses in our retirement.

In total, we have spent more than \$300,000 to pay for improvements to the County. This is money we had to pay out-of-pocket and, in the process, the value of our property decreased by an additional \$120,000. For these reasons, we are pleading with you to remove the final condition on the Resolution/Preliminary Plan (which can't be met legally in any case) so that we can move on. We hope that this is the end of a very long road.

Thank you
Jacqueline and Daniel McGroarty

SUPPLEMENTAL STATEMENT OF JUSTIFICATION

Minor Amendment Application to Preliminary Plan No. 120140140

As explained in our Statement of Justification submitted with our Application (which is incorporated herein), we are seeking to amend our Preliminary Plan (aka "**Resolution**" of June 3, 2015, which is also attached to our email). **The amendment is minor** because it "does not change density in a manner that results in greater adequate public facility impact; make major changes to lot configuration or location, or right-of-way width or alignment; or alter the intent, objectives, or requirements of the Board in approving the preliminary plan." See **Exhibit 1** (includes Chapter 50.4.2.D of MC Code).

The amendment merely seeks to remove one condition (the construction of "a 10-foot shared use path along New Hampshire Avenue" in Ashton, Maryland) that cannot, per MDOT, be legally fulfilled because of public safety and storm-management and other reasons (which is further explained in the MDOT's letter dated January 24, 2019, attached as **Exhibit 2**) and which involves only a small portion of the 7 acres lot that has already been subdivided since 2017 into 2 new lots (one lot now owned and occupied by our daughter and the other lot owned and occupied by the Chun family; we still live on our property). See **Exhibit 3A & 3C** showing the area, as well as the property prior to the subdivision.

The only opposition filed to our application has been from MCPD in their letter dated February 5, 2020. See **Exhibit 4**. In that letter, they solely express that they are unable to support our plan because they believe that it would violate Chapter 50.4.2.D.2 for failing to "conform to the 2018 Bicycle Master Plan." Chapter 50.4.2.D.2, however, does not require conformity to a bike plan. Rather, this section requires compliance with the *Sandy Spring/Ashton Master Plan* - the plan applicable to us. See, the **Resolution** attached to our email that clearly references this as the "master plan"; it is the very plan that this Board used to approve our initial preliminary plan and it has not changed to date.

Approval of our minor amendment will not in any way compromise substantial compliance with the Sandy Spring/Ashton Master Plan, particularly since there are no other shared-use paths on any of the connecting neighboring properties next to us (**see Exhibit 3**); and thereby also preserving existing conditions and maintaining Ashton's unique rural character.

Moreover, while we understand the County's objectives surrounding its 2018 Master *Bike* Plan, that plan itself is not compromised in anyway by our amendment. Our property area falls outside of the areas that the County is prioritizing in its Master *Bike* Plan. See as **Exhibit 5**. There are no bike paths near our property, and it is undisputed that a bike path

that cannot have connectivity is insufficient and unsafe. See e.g., **Exhibit 2**. There is also no dispute that there will not be a bike path constructed on New Hampshire and, even if we did construct the path, it would never have "connectivity" to another path because the State has no plans to change New Hampshire Avenue or develop any bike paths that would allow for connectivity to such a path. See e.g., **Exhibit 3C** showing no connectivity around us. Likewise, just recently in January 2020, the County also released its proposal for potential development to the Ashton Village Center and, even under that plan, there's no plan to construct any bicycle paths that would allow for any connectivity to us. See **Exhibit 6**.

For this reason, amending our plan to strike the condition is minor and has no impact on the County's Master Bike Plan.

In addition, approval of our amendment actually does comply with the goals of the County's Master Bike Plan. See **Exhibit 7**. The goal is to keep bicyclists/pedestrians safe and the State found that compliance with the condition would make it unsafe for bicyclists, giving them a false sense of safety/security on a State road. See e.g., **Exhibit 8** (map of Bicycle Stress Areas) and **Exhibit 3C** (showing cars crossing over lines). Our amended plan actually keeps bicyclists safer.

Furthermore, we have completed all the other conditions under our Preliminary Plan. Indeed, all occupancy permits for both homes were issued years ago. We also received a letter from the County dated May 23, 2019 stating a more recent inspection had been done of the property and the only item they found of non-compliance relates to the construction of the bike path, which is what is at issue here.

You will note that all items having the greatest impact on the community and County, have been satisfied to fully comply with Resolution and to conform with the Sandy Spring/Ashton Master Plan. Items we completed for example, include, but are not limited to:

- construction of a 200 foot County road x 140 "T road" for County fire engine access (see **Exhibit 3B**)
- dedicated 1.5 acres of our land to Forest Conservation and Tree Conservation
- complied with all tree replacement and planting
- removed all existing septic systems on the property
- installed 600 ft of a new sewer line
- landscape repair due to destruction of rock wall, pathway, plant material during install of sewer line
- dedicated 50 feet right away on the newly constructed road to the County
- dedicated 60 feet right of way along New Hampshire Ave to the County
- installed a new fire hydrant on the County road for public access
- installed new drains and pipes along new County road to manage water flow (part of sediment control).

The costs to us for these improvements **exceeded \$309,219** (and, as explained in our Statement of Justification, these amounts were paid through a home equity loan, the sale of Lot 4, credit card debt, and our personal savings). See, Updated Cost Itemization, attached

to **Exhibit 9A**. And these costs, specifically the costs relating to the construction of the road, were all incurred simply to service one new home (for Lot 5 – the other home on Lot 4 accesses from New Hampshire Ave only).

In addition to all the other costs listed above, *as a direct result of our subdivision plan* (not included as a condition in the Preliminary Plan), the County also:

- received **\$85,344.44 in impact taxes** (see **Exhibit 9B**); half of these amounts (\$42,672) went directly to DOT, which could use these funds towards *any* County projects or bike/pedestrian infrastructure plans; AND
- receives **\$7,772 in additional real property taxes** each year. (see **Exhibit 9C**).

For these reasons, we do not understand why the County continues to oppose our amendment and continues to demand that we give additional monies to other projects in the area. For example, a Senior Planner of Parks and Planning has repeatedly told us that they would not approve our amendment, we'd be "wasting our time and money" submitting an application and told us to just "get a small loan" to finish the project. Rebecca Torma of MCDOT also recently told us that we should pay the County an additional \$56,000.00 since the State denied approval of the bike path. See **Exhibit 10** from Robert Kronenberg relaying Ms.Torma's position (which she also expressed to us in subsequent communications). Given the arbitrariness of her position and this amount, we finally hired an MC zoning attorney to help assist us in reaching an agreement with Ms.Torma on this matter. Unfortunately, despite the considerable amounts of time we spent pursuing that route, she would not budge. When it became clear the attorney could not even help us, we decided to move forward ourselves to avoid expending more money.

We have complied with the Preliminary Plan to the full extent possible (expending over \$309,219 in doing so) and our amendment substantially complies with the Sandy Spring/Ashton Master Plan so we are confused by the relentless obstacles and road blocks placed on us by the County. Most recently even, in effort to resolve this matter further, we offered to pay the County \$10,000 to end this, since this is the amount we were told by Ryan Sigworth of Park and Planning that it would cost to build the shared use path. See sample of emails discussing the \$10,000 amount attached as **Exhibit 11**. We also learned of another project in Montgomery County where the developer also paid \$10,000 in lieu of constructing a similarly sized shared use path on a State road. See **Exhibit 12** for the project number associate with that project. In that case the County accepted the \$10,000. Yet, for some unknown reason, the County in our case, namely DOT, rejected our offer. What is equally confusing is that MCDOT has previously stated to us on numerous occasions that it has "no jurisdiction" or position on the shared-use path condition (see **Exhibit 13**) so we do not understand how or why they are insisting we pay such large and arbitrary sums to them now and are interfering with this matter from being resolved.

Just this past February, MCPD also told us we could resolve this matter by paying *costs of other* projects in the County – they even recommended that we go out and get estimates for the construction of projects in the area. This is yet another example of the unreasonable logistical hurdles that are placed upon us. How or why should we even be required to do this in light of everything that we have done and contributed to the infrastructure of the County? Not to mention, our plan, including the amendment, already meets the requirements to justify approval.

Another point that we respectfully request the Board to recognize is that, while the County consistently refers to us as "developers", we are not. To look away from this point ignores the very real inequities that have been placed on us since the beginning. We are not a part of the development industry and we do not have the resources – including employees or subcontractors at our disposal – that they have. We cannot even obtain “estimates” (as the suggest we do) because we do not have those connections. And while we have tried to reach out to developers over the years, and they have expressed their empathy for us, they are reluctant to help us in fear of jeopardizing any future projects of their own that they may have going forward.

Similarly, we do not have the deep pockets of the development companies in Montgomery County and it would be unfair to ignore the fact that those developers who do and have contributed additional monies towards various projects across the County can usually recover those costs with their other development/project costs.

We are 2 ordinary residents who bought land to help provide for and watch our family and grandchildren grow. Instead, we have lost 6 ½ years trying to get this plan completed. We have paid out for costs that we could never have imagined - or could afford in order to comply with our plan -- all of which we never would have entered into had we known then, what we know now. We had retained lawyers, a real estate agent and engineers, and no one told us then what we were up against. We had no way to know what we would lose, or we would have never bought the land.

We remain hopeful that you will find that we have complied with all our obligations and that our application for minor amendment meets all the requirements for approval.

Sincerely,

/s/

Jaqueline & Daniel McGroarty

Attachment 4 - C

From: [Jacky McGroarty](#)
To: [Van Alstyne, Chris](#)
Subject: Re: McGroarty - Minor Amendment Application to Preliminary Plan No. 120140140. (Materials for Hearing set for 4/16/20)
Date: Monday, March 23, 2020 3:17:07 PM
Attachments: [image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)

Yes - I believe I sent that to you in a recent email and thought it was included in the recent package. However, if you want to lead with that or I missed including...yes please say that we are willing to pay the 10,000 in lieu of building.

thank you

Jacky

On Mon, Mar 23, 2020 at 3:07 PM Van Alstyne, Chris
<chris.vanalstyne@montgomeryplanning.org> wrote:

Thank you, Jacky. This is to confirm receipt of your email as well as your attachments and exhibits.

Just to confirm our previous conversations, would you like me to include your offer of \$10,000 as an in-lieu contribution as part of this application?

Chris



Chris Van Alstyne

Transportation Planner Coordinator

8787 Georgia Avenue, Silver Spring, MD 20910

chris.vanalstyne@montgomeryplanning.org

301.495.4629



From: Jacky McGroarty <jacky.b.mcg@gmail.com>
Sent: Monday, March 23, 2020 2:43 PM
To: MCP-Chair <mcp-chair@mncppc-mc.org>; Van Alstyne, Chris
<chris.vanalstyne@montgomeryplanning.org>
Subject: McGroarty - Minor Amendment Application to Preliminary Plan No. 120140140.
(Materials for Hearing set for 4/16/20)

Dear Chairman Anderson, Vice-Chairwoman Fani-Gonzalez, Commissioner Cichy, Commissioner Patterson, Commissioner Verma, and Mr. Van Alstyne -

We are writing to you today because we were advised to submit any supplemental information or materials that we would like to use during the Hearing (set for April 16, 2020) by today. We were told that this was the proper procedure by Chris Van Alstyne of M-NCPPC, who is on this email per his instruction. We are also unsure how the hearing will proceed given the current COVIS-19 situation and thought we would err on the side of caution by sending all our information at this time.

Please see our Supplemental Statement of Justification attached, which we prepared with our daughter. We are also attaching Exhibits 1-13 and the Resolution at issue, which we also prepared/put together and each is specifically referenced/addressed in our Supplemental Statement of Justification. We spent a lot of time and care preparing all this material, so we greatly appreciate your time and attention to this matter and hope that you/your families are healthy and well.

Sincerely,

Jacky (and Dan) McGroarty

[EXHIBITS 1-3.pdf](#)

[EXHIBITS 4-6.pdf](#)

[EXHIBITS 7-13.pdf](#)



Attachment 5

DEPARTMENT OF TRANSPORTATION

Marc Elrich
County Executive

Christopher R. Conklin
Director

April 2, 2020

Mr. Chris Van Alstyne, Planner Coordinator
Area 3 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan Amendment
No. 120140140A
Ingleside

Dear Mr. Van Alstyne:


We have completed our review of the preliminary plan amendment submitted to Planning Department on December 23, 2019. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. This letter and all other correspondence from this department should be included in the package.

Applicant's Request: Amend Preliminary Plan condition no. 4 in the Planning Board Resolution that requires the applicant to construct a 10-foot shared use path along the frontage of the Subject Property, which is located at 17720 New Hampshire Avenue. Instead of constructing the shared use path along their New Hampshire Avenue street frontage, they propose to make a \$10,000

Office of the Director

101 Monroe Street, 10th Floor, Rockville, MD 20850 · 240-777-7170 · 240-777-7178 Fax
www.montgomerycountymd.gov/mcdot

 montgomerycountymd.gov/311 301-251-4850 TTY

contribution for off-site public bike improvements.

MCDOT Response: Per the Planning Board Resolution, the applicant is required to construct the shared use path along their street frontage. However, MCDOT will accept contributions in lieu of constructing bike facilities along applicant's street frontages for which there is no connection. The contribution amount can be determined two different ways: 1)based on the cost estimate from the applicant's engineer to build the shared use path along their street; or 2)using the county's average cost, determined from other projects, to build a shared use path. This number is then multiplied by the linear street frontage to determine the final amount.

MCDOT did provide the applicant with an average cost of \$56,000 to build the shared use path along their New Hampshire Avenue street frontage. This money would then be used to construct the Ashton Bikeway Project (CIP 507596).

Thank you for the opportunity to review this preliminary plan amendment. If you have any questions or comments regarding this letter, please me for this project at rebecca.torma-kim@montgomerycountymd.gov or (240) 777-2118.

Sincerely,

Rebecca Torma, Manager
Development Review Team
Office of Transportation Policy

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cc: sharepoint/correspondence FY 2020

Mr. Chris Van Alstyne
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cc-e: Patricia Shepherd, MCDOT DTE