



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

MCPB No. 20-033  
Preliminary Plan No. 120190240  
Battery Lane District Preliminary Plan  
Date of Hearing: April 23, 2020

**MAY 14 2020**

**RESOLUTION**

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

WHEREAS, on July 3, 2019, Aldon Properties ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 4 lots on 9.65 acres of CR 3.5 C 0.5 R 3.5 H 120, CR 1.5 C 0.5 R 1.5 H 120, and the Bethesda Overlay Zone (BOZ) zoned-land, located on Battery Lane between Old Georgetown Road and Woodmont Avenue ("Subject Property"), in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120190240, Battery Lane District ("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 April 10, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 23, 2020, 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 April 23, 2020, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 3-0; Commissioners Anderson, Cichy, and Verma voting in favor, with Commissioner Patterson abstaining, and Commissioner Fani-Gonzales being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120190240 to create 4 lots on the Subject Property, subject to the

following conditions:<sup>1</sup>

**General Approval**

1. This Preliminary Plan is limited to four lots for up to 1,341,000 square feet of development including 6,000 square feet of non-residential uses and 1,335,000 square feet of residential uses for up to 1,130 units.

**Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for one hundred twenty (120) months from the date of mailing of this Planning Board Resolution, as illustrated on the Certified Preliminary Plan.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 20, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated March 3, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording any plat for any site included in the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. Any record plat for any site within the Subject Property must show all floodplain and associated 25-foot building restriction lines.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letters dated November 13, 2019, November 18, 2019, and April 2, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be

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

amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated October 22, 2019 and revised February 20, 2020 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in its letter dated November 13, 2019, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### **Future Site Plan Required**

10. Before clearing or grading or Planning Board approval of a record plat for any site included in the Subject Property, the Applicant must receive Staff certification of a Planning Board-approved Site Plan. Demolition and site preparation are permitted. The number and location of site elements, including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, and any associated bike path design will be determined through Site Plan review and approval.
11. If any approved Site Plan(s) or Site Plan amendment(s) for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan(s) or Site Plan amendment(s).
12. Building and Site Design  
Prior to Planning Board approval of individual Site Plans associated with this Preliminary Plan, the Applicant must:
  - a. Site C; Submit Alternative Method of Compliance request for the lay-by access point for consideration by the Planning Board and approval by MCDPS – Right-of-Way Permitting Section;
  - b. Sites A, C, & D; Provide public pedestrian and bicycle connections and enhanced open spaces as specified in the 2017 *Bethesda Downtown Sector Plan*;

- c. Site D; Design of any open space areas between the building and 100-year floodplain must minimize hardscape and maximize planting of native species.
- d. Address the SITES & LEED recommendations of the Sector Plan, specifically related to energy efficiency and building design features;
- e. At the time of each Site Plan, the Applicant must provide a minimum of 35% of site area on each Site as green cover as described in Section 2.4.1 of the *Bethesda Downtown Sector Plan* and any proposed tree canopy must utilize tree species and canopy sizes at 20-year maturity per the M-NCPPC Approved Trees Technical Manual.
- f. For any open spaces on Sites A and E, submit either a noise analysis or a waiver request per Section 2.2.2 of the Noise Guidelines;
- g. Address Bird-Safe Design per the Sector Plan Design Guidelines.

## **Environment**

13. The Applicant must comply with the following conditions of approval of Preliminary Forest Conservation Plan 120190240, approved as part of this Preliminary Plan.

- a. Prior to certification of Preliminary Plan, the Applicant must update the Variance Tree Mitigation Table to reflect the correct number of mitigation trees to be planted based on the 114.50 caliper inch mitigation requirement with a minimum size of 3 caliper inches per tree.
- b. The Variance Tree Mitigation Table must demonstrate appropriate mitigation plantings for each individual site; however, Staff may approve minor adjustments to the quantities per site at the time of Final Forest Conservation Plan.
  - i. The location of trees credited towards variance mitigation plantings must be at least 5 feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or associated easements.
- c. Future Site Plan submittals for implementation of any site included in the Preliminary Plan must include an associated Final Forest Conservation Plan.
- d. Prior to any permit for land disturbance activity for any site included in the Subject Property; the Applicant must record a Certificate of Compliance to use an off-site forest mitigation bank easement in the Montgomery County Land Records. The Certificate of Compliance must address the applicable site(s) and be in a form approved by the M-NCPPC Office of the General Counsel.

## **Transportation**

14. The Applicant must dedicate and show on the record plat(s) all land necessary to accommodate a minimum of 35 feet from the existing right-of-way centerline along the Subject Property frontages for Battery Lane in support of a master-planned 70-foot right-of-way.
15. Before the release of any above-grade building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District (TMD) and work toward the Sector Plan goal of 55% Non-Auto Driver Mode Share.

### **Off-Site Improvements**

#### **16. Separated Bicycle Facility**

Due to the Applicant's requested multi-phased build-out, the Applicant must implement the two-way separated bicycle facility along the south side of Battery Lane as both an interim and ultimate condition.

- a. Prior to the issuance of the first above grade building permit, the Applicant must obtain MCDOT acceptance of the Interim Separated Bike Lane Facility between Old Georgetown Road and Woodmont Avenue.
- b. Prior to the issuance of the first residential Use & Occupancy Certificate for the first building, the Applicant must construct and obtain MCDOT acceptance of the protected intersection at Woodmont Avenue and Battery Lane.
- c. Prior to the certification of each Site Plan for each individual site, the Applicant must show the final design of the Ultimate Separated Bike Lane Facility on the Certified Site Plan, subject to MCDOT approval. Construction of the ultimate facility is preferred; however, the final determination of construction or financial contribution will be made by MCDOT. Any financial contribution amount must be approved by MCDOT prior to Certification of each Site Plan.
- d. Prior to the issuance of the first Use & Occupancy Certificate for each individual Site Plan, the Applicant must construct for MCDOT acceptance or financially contribute to the implementation of the Ultimate Separated Bike Lane Facility along the associated site frontage. If a financial contribution is accepted by MCDOT, the contribution must be made prior to issuance of the first Use & Occupancy Certificate for each individual Site Plan.

### **Certified Preliminary Plan**

17. The Applicant must include all applicable agency approval letters and Preliminary Plan Resolution on the approval or cover sheet(s) of the Certified Preliminary Plan.



18. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of Site Plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

19. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:

- a. Revise Phasing Plans to define "Interim" and "Ultimate" Separated Bike Lane Facility, and to incorporate Off-Site Improvements as stated in the above conditions.
- b. Update Preliminary Plan for Site D to reflect the recently approved floodplain study.
- c. Modify data table to reflect development standards approved by Planning Board.

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

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

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

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The proposed subdivision is within an existing block and established street grid that is developed for multifamily housing.

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

The Preliminary Plan meets all applicable sections of the Subdivision Code. The four proposed lot sizes, widths, shapes, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Sector Plan, the existing lot pattern of the surrounding properties, and

for the building-type contemplated for the Property, multi-family development.

As further discussed in Finding 4, the lot design for Site D is large enough to develop for the purposes of multi-family residential while being encumbered by an existing floodplain.

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

Master Planned Sites

The 2017 *Bethesda Downtown Sector Plan* recommends an enhanced public open space, referred to as the North Bethesda Urban Greenway, on Site D. The development of Site D and the related open space and recreation improvements will be reviewed as part of the Site Plan for Site D. The Preliminary Plan has been conditioned to require conformance with the Sector Plan recommendations for Site D at the time of Site Plan review. The Sector Plan also calls for a public connection on Site A and Site C. On Site A, the intent is to create a pedestrian connection going east from Woodmont Avenue, through the rear of the properties on the north side of Battery Lane, to the Bethesda Trolley Trail on Site D. The design for Site A will allow for a public pedestrian connection as recommended in the Sector Plan. The recommended public connection on Site C will provide a north/south pedestrian connection from Rugby Avenue to Battery Lane, which will be accommodated by Site C.

There are no other Sector Plan recommendations for public facilities or local recreation requirements for the Subject Property.

- d. *The Lot(s) and Use comply with the basic requirements of Chapter 59*  
The lots were reviewed under and found to be in compliance with the dimensional requirements for the CR zone as specified in the Zoning Ordinance.

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

a. Land Use

The Project substantially conforms to the site recommendations included in the 2017 *Bethesda Downtown Sector Plan*. The Property is located in the Battery Lane District, designated as sites 4, 7, 9, 11, & 14 on page 130 of the Sector Plan, which recommends rezoning to the CR zone to promote enhanced redevelopment opportunities to foster a quality mix of housing options. This District consists of a range of housing types including garden style apartments along Battery Lane as well as single unit homes and low- to high-



rise buildings. Battery Lane Park and the North Bethesda Trail are located in the center of the District and are heavily utilized, however wider buffered sidewalks and connections through long blocks are needed to make this neighborhood a truly walkable area. Specifically, the Project addresses the following applicable goals as outlined in the Sector Plan:

- *Preserve existing market-rate affordable housing.*

The Applicant owns two additional buildings within the Battery Lane District that are not part of this development application that will remain as market-rate affordable. The associated Sketch Plan was conditioned to require certain sites provide MPDUs in excess of the 15% minimum requirement.

- *Promote enhanced redevelopment opportunities to foster a quality mix of housing options.*

The Preliminary Plan will create four lots to allow for redevelopment of older multifamily buildings to provide an increase of multifamily units with a mix of housing styles including townhouse entry units and taller residential apartment buildings. The related Sketch Plan proposal includes a mix of unit sizes including efficiency, one-bedroom, two-bedroom, and three-bedroom units at varying levels of affordability, including MPDU's.

- *Expand neighborhood green at Battery Lane Park.*

On Site D of the Preliminary Plan, the Sector Plan recommends an expansion of Battery Lane Urban Park, referred to as the North Bethesda Trail Urban Greenway (Page 82 of the Sector Plan) and calls for this to be a green and active linear park connection between the National Institutes of Health and Woodmont Triangle. The Sector Plan recommends the expansion to be approximately 0.9 acres in size and wide enough to allow stream improvements, including daylighting of the existing piped stream, environmental interpretation and play elements. The proposed configuration of Site D will allow for an expansion of a neighborhood green as recommended in the Sector Plan, with the details of size and design to be reviewed at the time of Site Plan, as conditioned.

b. Environment

The Sector Plan recommends that development on private property provide a minimum of 35 percent green cover, which may include singularly or a



combination of intensive green roof and tree canopy. As conditioned, each site will meet the minimum requirements for 35 percent green cover through green roof, tree canopy, or a combination of the two. The Applicant has provided a green cover exhibit conceptually showing how each of the five sites may provide green roof and/or tree canopy meeting the Sector Plan's goals. Each site's green cover will be further reviewed at the time of each Site Plan.

The Sector Plan calls for any future development on Site D to consider daylighting the existing piped stream. The ecosystem benefits provided by daylighting the piped stream, which include significantly increased stormwater capture; improved water quality; and increased biodiversity and habitat, are also directly linked to Sector Plan goals. While the Applicant has initially stated this is infeasible due to the depth of the existing pipe, the related Sketch Plan conditioned the Applicant to continue working with applicable County agencies to determine the feasibility of daylighting the stream. This feasibility will be determined during subsequent Site Plan review of Site D, along with related Sketch Plan conditions requiring expansion of the neighborhood green.

c. Transportation

The 2017 *Bethesda Downtown Sector Plan* recommended improvements to pedestrian and bike connectivity throughout the Battery District and along the park. The 2018 *Bicycle Master Plan* also recommended specific pedestrian and bicycle improvements such as enhancement of the existing Bethesda Trolley Trail to support the MD 255 South Breezeway network and the construction of two-way Separated Bicycle Facilities along Battery Lane. The Applicant will enhance the existing Bethesda Trolley Trail which will separate the pedestrian and bicyclists on two separate paths. The Preliminary Plan also redesigns the existing Battery Lane right-of-way to allow the construction of a two-way Separated Bicycle facility along the south side of Battery Lane. As conditioned, these improvements will be in conformance with the recommendations of the 2018 *Bicycle Master Plan* and the Sector Plan.

The Preliminary Plan Application substantially conforms to the 2017 *Bethesda Downtown Sector Plan*. The Preliminary Plan Application complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The site is not subject to an Urban Renewal Plan.

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

a. Roads and Other Transportation Facilities

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

i. *Existing Facilities*

Each of the proposed lots has direct frontage and access to Battery Lane, which contains two travel lanes, sidewalks, and overhead utilities. The Project is located approximately half a mile from two Metro Stations (Bethesda Metro to the south, and Medical Center to the north). The Project will also provide direct access and enhancements to the Bethesda Trolley Trail with access to Battery Lane Urban Park.

ii. *Proposed public transportation infrastructure*

Vehicular access to each of the proposed lots subject to this Preliminary Plan are proposed directly from Battery Lane. The Applicant proposes consolidating many of the existing access points to reduce curb cuts, which will be finalized at the time of Site Plan review. As conditioned, access points proposed for Site C will require the submittal of an Alternative Method of Compliance waiver at the time of Site Plan. Pedestrian and bicycle access to the Property will be provided along Battery Lane, the sidewalks will be enhanced with the Bethesda Streetscape Standards, or alternative standard as directed by MCDOT at the time of Site Plan(s), and the bicycle facilities will be upgraded with the two-way Separated Bicycle facility. The Project is located approximately half a mile from two Metro Stations (Bethesda Metro to the south, and Medical Center to the north). The Project will also provide direct access and enhancements to the Bethesda Trolley Trail with access to Battery Lane Urban Park.

b. Local Area Transportation Review (LATR)

A transportation study, dated May 31, 2019, was submitted to analyze the Project. The proposed development is estimated to generate 360 net new morning peak-hour person trips (183 vehicle trips) and 424 net new evening peak-hour person trips (216 vehicle trips). Because the estimated transportation impact of the Project exceeds 50 net new trips for the vehicular, pedestrian, and bicycle modes, the Project evaluated the adequacy of each of these modes to satisfy the Local Area Transportation Review requirement.

Vehicle Adequacy



As a project that generates fewer than 250 net new peak hour vehicle trips within Downtown Bethesda, the Applicant was required to evaluate one tier of intersections, resulting in a total of four intersections and the site access points along the Battery Lane corridor. In accordance with the 2016-2020 Subdivision Staging Policy, the intersections included in this analysis were evaluated as part of the Battery Lane corridor within the Downtown area under the Highway Capacity Manual (HCM) methodology. That methodology allows for a more comprehensive operational analysis of the transportation network than an evaluation of each of the intersections in isolation. The four specific intersections studied as part of the Transportation Study are:

1. Battery Lane/ Old Georgetown Road
2. Battery Lane/ Keystone Avenue
3. Battery Lane/ Woodmont Avenue
4. Battery Lane/ Wisconsin Avenue/ Rosedale Avenue

The Transportation Impact Statement concluded that the Battery Lane Corridor would continue to function within the congestion standard set forth in the Subdivision Staging Policy. Staff at the Montgomery County Department of Transportation (MCDOT), MNCPPC, and the Maryland State Highway Administration (MDSHA) accepted the findings of the Transportation Impact Statement. As a point of clarification, the MDSHA approval letter indicated that the Applicant team was unresponsive to requests by that agency to provide analysis of each of the isolated intersections along the Battery Lane Corridor. This supplemental information was requested to further evaluate operations at those intersections in the future, however, it is not necessary in the determination of adequate public transportation facilities for the Subject Application.

#### Pedestrian Adequacy

Because the Project generates more than 50 peak hour pedestrian trips, the Applicant evaluated each of the crosswalk level of service at LATR study intersections within 500 feet of the site and determined that each of the pedestrian crossings would operate at a level of service "C" or better in the future condition. The Applicant must fix or fund improvements to non-compliant ADA infrastructure pedestrian infrastructure within 500 feet of the Subject Property, in accordance with the 2016-2020 Subdivision Staging Policy and supplemental guidance issued by the Montgomery County Department of Transportation. As conditioned by MCDOT in their letter dated January 15, 2020, the Project is required to construct or fund improvements to provide adequate pedestrian infrastructure for the pedestrian trips generated by the Project.

#### Bicycle Adequacy

The Applicant evaluated bicycle travel in accordance with the Planning Department's "Level of Traffic Stress" analysis, which recognizes the effect different roadways have on bicyclists' comfort. That analysis determined that bicycle facilities within 750 feet of the Site were Level of Traffic Stress "2" or better in the future condition. This finding was based, in large part, on the provision of the two-way separated bicycle facility along Battery Lane and enhancement of the Bethesda Trolley Trail. As conditioned, the Applicant will design and construct the required bicycle infrastructure, in accordance with direction from MCDOT, to provide adequate service for the bicycle trips generated by the Project.

c. Other Public Facilities

**Schools Analysis**

The Project was reviewed for school adequacy based on the applicable annual school test (FY20 Annual School Test) which was approved by the Planning Board on June 20, 2019 and effective July 1, 2019. The Application proposes development of 1,130 multifamily high-rise units, replacing 264 existing multifamily high-rise units and 147 existing multifamily low-rise units.

Calculation of Student Generation

To calculate the number of students generated by the development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the southwest region of the County.

With a net of 719 units, the proposed project is estimated to generate 13 new elementary school students, 5 new middle school students, and 9 new high school students.

Cluster Adequacy Test

The project is located in the Bethesda-Chevy Chase High School Cluster. The student enrollment and capacity projections were based on the FY20 Annual School Test.

The Moratorium Threshold is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. The test indicated the estimated enrollment impacts of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle, and high



school cluster levels to accommodate the estimated number of students generated by this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Bethesda ES and Westland MS, respectively. The individual school adequacy is based on the FY20 Annual School Test for student enrollment and capacity projections for these applicable schools.

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds are the numbers of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and the seat deficit threshold. The test indicated the estimated enrollment impacts of this application fall below the moratorium thresholds for both Bethesda ES and Westland MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

Based on the school cluster and individual school capacity analysis performed, using the FY2020 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this Application.

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Property.

*Adequate Public Facility Validity Period*

In accordance with Section 50.4.3.J.5.b.ii, the Applicant requested a validity period longer than the minimum specified in the Code based on the size and complexity of the Preliminary Plan. That request set forth a detailed phasing plan demonstrating when each phase of development would be completed. Unless otherwise specified through a condition of approval, construction

phasing for any site covered by the Preliminary Plan can take place in any order, either sequentially or simultaneously. As conditioned, the Adequate Public Facility review for the Preliminary Plan will remain valid for one hundred twenty (120) months, phased in the following manner to ensure timely delivery of the public amenities:

1. Prior to the issuance of the first above grade building permit, the Interim Separated Bike Lane Facility must be accepted by MCDOT between Old Georgetown Road and Woodmont Avenue.
2. Prior to the issuance of the first residential Use & Occupancy Certificate for the first building, the protected intersection at Woodmont Avenue and Battery Lane must be constructed by the Applicant and accepted by MCDOT.
3. Prior to the certification of each Site Plan for each individual site, the final design of the Ultimate Separated Bike Lane Facility must be shown on the Certified Site Plan, subject to MCDOT approval. Construction of the ultimate facility is preferred; however, the final determination of construction or financial contribution will be made by MCDOT. Any financial contribution amount must be accepted by MCDOT prior to Certification of each Site Plan.
4. Prior to the issuance of the first Use & Occupancy Certificate for each individual Site Plan, the portion of the frontage for the Ultimate Separated Bike Lane Facility must be constructed and accepted by MCDOT. If a financial contribution is accepted by MCDOT, the contribution must be made prior to issuance of the first Use & Occupancy Certificate for each individual Site Plan.

In accordance with Section 50.4.3.J.5.b.ii, the size and complexity of the Preliminary Plan warrants the extended validity period and, as conditioned, would not be adverse to the public interest.

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

*a. Environmental Guidelines*

Individual Natural Resource Inventory Forest Stand Delineations (NRI/FSD) were approved for each site within this Application on April 29, 2019. The plans, designated No. 420191430; 420191450; 420191460; and 420191470 identify the existing man-made and natural features associated with the Property, such as the buildings, associated parking, the street trees, and landscape elements. The on-site setting includes significant and specimen trees present within Sites A, C, D, and E. There are no rare, threatened, or endangered species present within the subject sites.



All of the Sites lie within the Lower Rock Creek Watershed, which is a use I-P watershed. A perennial stream, observed on approved NRI/FSD No. 420191460, and associated 100' stream valley buffer lies within Site D in the northwest corner. The stream runs on the surface for approximately 80', draining to the north, before it becomes piped to run south along Site D's eastern border towards Battery Lane.

*b. Forest Conservation Plan*

There is no forest on-site or adjacent to the Property, however there is an afforestation requirement of approximately 1.51 acres which will be addressed off-site, via certificate of compliance from an off-site bank.

*c. Forest Conservation Variance & Tree Save Plan*

Based on the submitted plans, approximately 114.50 caliper inches of variance mitigation tree plantings are required onsite and must consist of native canopy trees. This required planting may also be counted towards Sector Plan green cover requirements (35% of each site) provided that the selected tree species are consistent with the approved species list found in the MNCPPC Trees – Approved Technical Manual.

Due to the impact anticipated by the proposed project, this Application is subject to a forest conservation variance. Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The Forest Conservation Law requires no impact to trees that: measure 30 inches or greater, DBH; are part of an historic site or designated with an historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species ("Protected Trees"). Any impact to a Protected Tree, including removal or disturbance within the Tree's critical root zone ("CRZ") requires a variance. An application for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request in a letter dated August 21, 2019, for the impacts/removal of trees. The Applicant proposes to remove ten (10) trees (Protected Trees) that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. As conditioned by Sketch Plan No. 320190080, the Applicant has submitted a Tree Save Plan (TSP) for review with the Preliminary Plan Application. The TSP proposes the use of root

pruning and tree protection/silt fencing as coordinated by an International Society of Arboriculture certified arborist, who is also a MD licensed tree care expert.

*Table 9 - Trees to be Removed*

Tree Number	Species	DBH Inches	CRZ Impact	Status
ST-40	Red Maple	30	59%	Good condition
ST-45	Tulip Tree	31	22%	good condition; grading, sidewalk, and dry utility line
ST-47	Red Maple	33	100%	Good condition; trunk cavities
ST-48	Red Maple	37	100%	Good condition; twin trunk
ST-55	Silver Maple	43	27%	good condition; grading, sidewalk, dry utility line, and storm drain
ST-56	Osage Orange	34	30%	Fair condition; trunk cavities
ST-60	Red Maple	39	69%	Good condition
ST-61	Red Maple	41	67%	Fair condition; epicormic branching
ST-62	Red Mulberry	34	34%	Poor condition; leaning; trunk cavities; vines
ST-80	White Ash	36	34%	Poor condition; ash borer

**Unwarranted Hardship Basis**

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of a property. In addition to the required findings outlined numerically below, the Applicant has demonstrated that failure to grant the variance would result in an unwarranted hardship because the life cycle of the existing apartment complex has run its course. Redeveloping the site in accordance with the County's Bethesda Downtown Sector Plan would provide an improved quality of life for residents, including those in MPDU's, allow for improved green and open space, and increase connectivity between the Battery District and the rest of Downtown Bethesda. The Planning Board finds that there would be an unwarranted hardship if a variance were not considered.



**Variance Findings**

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. The Planning Board made the following determination based on the required findings in the review of the variance request and the preliminary forest conservation plan:

*Granting of the requested variance:*

1. *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 as the disturbance to the Protected Trees is due to the reasonable development of the Property. Further, the redevelopment of the Subject Property, which is a right that has been granted to others on nearby properties, would include the fulfillment of Sector Plan recommendations including providing linkages and gateways to the North Bethesda Trail via an Urban Greenway.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The Subject Property is in the Battery District, which consists of clusters of similar high-rise and garden apartment buildings. This district is also bordered on the north by the NIH facilities. The past development of these properties, which include extensive surface parking extending to adjacent property lines, has resulted in an environment that presents various engineering constraints. These circumstances are specific to the Subject Property and are not related to the actions of the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property. The requested variance is based upon the nature of the existing Sites and the resulting location of trees and on-site environmental features and utilities.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The Department of Permitting Services (DPS) approved the stormwater management (SWM) concepts for the project on November 13, 2019, November 18, 2019, and April 2, 2020. The SWM concept proposes to meet required storm water management goals by the use of micro-bioretenention planter boxes and 8-inch thick green roof on proposed buildings. Aside from stormwater management features, water quality will be further enhanced with this project through variance mitigation tree plantings which serve to maximize the permeability of the soil, further reduce water runoff, and provide increased shade and water retention/uptake. Therefore, due to the above, the project will not violate State water quality standards or cause measurable degradation in water quality.

*Mitigation for Protected Trees*

There are 10 trees proposed for removal in association with this Application. Planting mitigation for removals should be at a rate that approximates the form and function of the trees removed. Replacement should occur at a ratio of approximately one-inch caliper for every four inches DBH of removal, using trees that are a minimum of three inches caliper. For the 357 diameter-inches of subject trees to be removed, the Applicant must provide mitigation of at least 114.5 caliper-inches of replacements. Therefore, the mitigation requirements would be satisfied by the planting of 39 three-inch caliper trees. The Applicant currently proposes the planting of 32 three-inch caliper trees. Prior to the approval of Certified Preliminary Plans, the Applicant will be required to update the Variance Tree Mitigation Table to reflect the correct amount of mitigation plantings.

*County Arborist's Recommendation on the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on December 16, 2019. The County Arborist did not provide any comments or concerns regarding this request.

As a result of the above findings, the Planning Board approves the Applicant's request for variance from Forest Conservation Law to remove 10 subject trees with conditions requiring mitigation plantings of at least 114.5 caliper inches.

*d. Noise*

The Subject Application proposes development within 600 feet of arterial roads with more than 20,000 cars per day on Site A and E, therefore a Noise Analysis



for these Sites is required. A waiver per Section 2.2.2 of the Noise Guidelines may be requested for open space only. The Project has been conditioned to require a Noise Analysis be submitted prior to approval of Site Plans for Sites A and E.

*e. Environmental Protection*

There is an existing piped stream that carries water from downtown Bethesda through Site D along the eastern property line. This piped stream daylights at the northeast corner of the site into an unnamed tributary on the National Institutes of Health property. The portion of the stream that is daylighted on Site D is subject to a 50-foot stream buffer, per the Montgomery County Environmental Guidelines. No buildings or structures are permitted within stream buffers. Exceptions to this guideline may, however, be made for bikeways, trails, and infrastructural uses found to be necessary, unavoidable, and minimized.

Given that Site D is the largest of all five sites (3.05 acres), and the limited size and location of the stream valley buffer, a large developable footprint remains outside of the stream valley buffer. Pursuant to Environmental Guidelines, the related Sketch Plan was conditioned to explore design alternatives for Site D building placement and/or footprints in order to minimize and mitigate any encroachment into the Stream Valley Buffer. The Project is located within an urban environment and therefore future constraints of the site may be identified. Any unavoidable encroachment into the stream valley buffer must be minimized and mitigated per Environmental Guidelines recommendations. Daylighting of the stream may be considered as potential mitigation for encroachment into the buffer.

As part of the Preliminary Plan Application review, the Applicant was required to complete a floodplain delineation study to determine where the existing floodplain line is located within Site D. The study, as approved by MCDPS, determined that the 100-year floodplain is located along the eastern property line. The approval requires the established 100-Year Floodplain and its associated 25-foot Floodplain Buffer to be shown on any associated sediment control plan and record plats. Any disturbance within 25 feet of the approved 100-year floodplain will require a Floodplain District Permit.

Section 50.4.3.K of the Subdivision Ordinance requires that the Planning Board restrict subdivision or development of any property that is located in the 100-year floodplain. The Planning Board may allow a platted lot to contain floodplain when it is demonstrated that there is sufficient safe ground to develop the property within the required setbacks of the zoning classification. Given that this Property (Site D) is zoned CR, there is no required side or rear setbacks



where the floodplain exists onsite. After dedication, Site D will be approximately 3 acres in size and large enough to accommodate development despite the encumbrance of the 100-year floodplain and the associated 25-foot floodplain buffer along the eastern property line. The Sector Plan recommends that Site D consider daylighting the existing stream, and the related Sketch Plan conditioned the Project to coordinate the feasibility of daylighting the stream during Site Plan review. The related Sketch Plan also conditioned the Project to explore design alternatives for Site D that would increase the width of the linear open space along the eastern property line with a minimum average of 95' and to minimize encroachment into the stream valley buffer. The Preliminary Plan has been conditioned to update the drawings based on the recently approved floodplain study prior to Certification of the Preliminary Plan. Therefore, Site D will be large enough to develop safely without disturbing the approved 100-year floodplain or 25-foot buffer, and the Project has been conditioned to explore design alternatives that increase open space along this area, minimize hardscape between the building and the 100-year floodplain, and to explore the feasibility of daylighting the stream during Site Plan review.

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

All four lots have received Stormwater Concept Plan approvals from the Montgomery County Department of Permitting Services (MCDPS). Site A/Lot A (4857 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes and extensive (8-inch depth) green roof. Site C/Lot C (4900 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes, extensive (8-inch depth) green roof, and suspended micro-bioretenction (silva cells) areas. Site D/Lot D (4949 Battery Lane) proposes to meet stormwater management requirements through a combination of micro-bioretenction and green roof. Site E/Lot E (4998 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes, extensive (8-inch depth) green roof, non-rooftop disconnection and a partial waiver for the remaining ESD which will drain to an existing NIH stormwater management pond.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 120 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is



MAY 14 2020 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy, Patterson, and Verma voting in favor, and Vice Chair Fani-González absent at its regular meeting held on Thursday, April 30, 2020, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board