



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

MCPB No. 20-083  
Preliminary Plan No. 120200130  
Kaiser Permanente Aspen Hill  
Date of Hearing: July 30, 2020

**AUG 17 2020**

**RESOLUTION**

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

WHEREAS, on February 26, 2020, Kaiser Permanente ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 10.05 acres of land in the CRT-1.5, C-0.5, R-1.0, H-60 zone, located at the intersection of Aspen Hill Road and Connecticut Avenue ("Subject Property"), in the Aspen Hill Policy Area and *Aspen Hill Minor Master Plan Amendment* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120200130, Kaiser Permanente Aspen Hill ("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 July 20<sup>th</sup>, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 30, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200130 to create 1 lot on the Subject Property, subject to the following conditions:<sup>1</sup>

<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.

1. This Preliminary Plan is limited to 1 lot for 180,000 square feet of medical office uses.

#### **Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for ten years (120) months from the date of mailing of this Planning Board Resolution.

#### Outside Agencies

3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated April 28, 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. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
6. 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 letter dated June 15, 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 MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. 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 May 16, 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.

## **Other Approvals**

### Concurrent Site Plan Approval

8. Before submitting a record plat application for the Subject Property, the Applicant must receive Staff certification of Site Plan No. 82018007A. The number and location of site elements, including but not limited to buildings, on-site parking, site circulation, sidewalks, open spaces, onsite amenities, and sidepaths is determined through site plan review and approval.
9. If an approved site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan amendment. Minor adjustments to the lot configuration as a result of final design of the traffic signal and related equipment at the shared driveway entrance and Connecticut Avenue at permitting with SHA will not require an amendment to the Preliminary Plan or Site Plan.

## **Transportation**

### Existing Frontage Improvements

10. Prior to the recordation of a plat, the Applicant must satisfy all necessary requirements of MCDPS and MDSHA to construct a 10-foot wide sidepath along the Property frontage on Aspen Hill Road and Connecticut Avenue.

### Off-Site Improvements

11. The Applicant must construct a 10-foot-wide sidepath along the north side of Aspen Hill Road and the west side of Connecticut Avenue. The sidepaths must extend offsite, within the public right-of-way, and tie into the existing sidewalk that connects at the intersection of Aspen Hill Road and Connecticut Avenue and maintain the 10-foot-width, to the extent possible.

## **Record Plats**

12. Environmental remediation, clearing and/or grading is permitted only for the removal of existing the Vitro/BAE Building on the Property prior to recordation of plat(s).

### Easements

13. The record plat must show necessary easements.

14. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
  - a. The record plat must reflect building restriction lines, as shown on the Preliminary Plan, to show the location of the floodplain, as approved by MCDPS.

Notes and Labels

15. The record plat must reflect all areas under common ownership.

**Certified Preliminary Plan**

16. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
17. 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 permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

18. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
  - a. Show resolutions and approval letters on the certified set
  - b. Update the final location of the floodplain line with BRL as shown on the FCP and Certified Preliminary Plan.
  - c. PIE must include all sidepaths, traffic signal boxes and bus stop shelters along Connecticut Avenue, and the final locations will be confirmed by MCDOT, SHA, and DPS.
  - d. The Limits of Disturbance on the Final Forest Conservation Plan must be consistent with the LOD on the Sediment and Erosion Control Plan.

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



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

The lot has been reviewed for compliance with Section 50-29(a) of the Subdivision Regulations. The layout of the subdivision, including size, width, shape, and orientation of the lot continues to be appropriate for its location within the subdivision and meets all applicable requirements of the CRT Zone.

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

The Project provides all required Master Plan 10' sidepaths along the property's frontage and no additional dedication was required for future public infrastructure. The Project establishes the minimum 10% public open space per each phase.

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

The consolidated lots were reviewed for compliance with the dimensional requirements for the CRT Zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that Zone. A summary of this review is included in Table 1.

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

The *2015 Aspen Hill Minor Master Plan Amendment* (Master Plan) acknowledges the changing office market in the area and recommends zoning to allow redevelopment that includes a neighborhood-serving mix of uses and activates the Connecticut Avenue corridor. The Master Plan also provides specific design criteria to support "*the transition of this area to a more pedestrian-friendly, accessible, and human-scale environment.*" (p. 13)

The long-term goal of the Master Plan is to facilitate comprehensive redevelopment; it recognizes the near-term likelihood of single-use redevelopment in transitional areas such as this commercial cluster. The Medical Center does not satisfy the long-term vision of a mixed-use development, however many of the human-scale and pedestrian-friendly design elements are met through the proposal.

- Public Realm: The Public realm along Aspen Hill Road will be improved with additional plantings, and the existing sidewalk will be expanded to become a sidepath (10 feet wide) extending to Connecticut Avenue. The existing sidewalk along Connecticut Avenue will be replaced with a greenspace buffer (6 feet wide), a two-way sidepath (10 feet wide), and a pedestrian sidewalk (8 feet wide).
- Building Placement: The Medical Center buildings are placed towards the south east of the Property. Building heights are concentrated along Connecticut Avenue and decrease from Connecticut Avenue moving west towards the existing single family neighborhoods.
- Public Amenities: In addition to the Medical Center, the Property includes an event space community plaza, an outdoor area for mindfulness and fitness activities, a nature trail with exercise equipment, a native plant, flower and herb garden in the middle of the Property.
- Building Entrances: The main entrance is located on Connecticut Avenue for people walking, biking or taking transit. The entrance includes landscaping and seating which are visible and accessible from Connecticut Avenue. The existing access from Aspen Hill Road will be gated and available only for emergency use and employees. Visitors traveling by car to the Medical Center will access the Property through the shared drive aisle with Home Depot.
- Vision Zero: In addition to the bikeway and sidewalk improvements, the Project will provide a new traffic signal and pedestrian facilities at the shared drive aisle and Connecticut Avenue, which was identified in the Master Plan.

Although the proposal does not fully advance the goal of a walkable mixed-use neighborhood center envisioned by the Master Plan, it does begin to provide the pedestrian and bicycle improvements and public amenities. This Application delivers a prominent new building which will enhance the Property's general appearance, mobility improvement along its frontages for pedestrians and cyclists, and public amenities. Thus, the Board finds these improvements to be in substantial conformance with the Master Plan.

#### Sector/Master-Planned Roadway and Bikeway

Connecticut Avenue is classified as a Major Highway, M-7, by the 1994 *Aspen Hill Master Plan*, with a recommended 150-foot right-of-way. The Applicant is providing the required dedication to expand the landscaped zone and construct the sidepath. Aspen Hill Road west of Connecticut Avenue is classified as an Arterial, A-38, by the 1994 *Aspen Hill Master Plan*, with a



recommended 80-foot right-of-way. No additional dedication is required along Aspen Hill Road. The 2018 *Bicycle Master Plan* recommends a two-way separated bike lane on the west side of Connecticut Avenue and a sidepath on the north side of Aspen Hill Road.

The Preliminary Plan substantially conforms to the 2015 *Aspen Hill Minor Master Plan Amendment*, the 2018 *Bicycle Master Plan*, and the 2018 *Master Plan of Highways and Transitways*.

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

50-4.3.J.5 - APF Extension request for Phase 2

The Application is requesting a phased approval, per Section 50-4.3.J.5 to extend the validity period of the APF approval for Phase 2 to 10 years. Per Section 50-4.3.J.5.b, “*if an applicant requests a longer validity period than the minimum specified in 5.a, the applicant must submit a development schedule or phasing plan for completion of the project to the Board for its approval.*”

- i. *At a minimum, the proposed development schedule or phasing plan must show the minimum percentage of the project that the applicant expects to complete in the first 5 or 7 years, whichever is the applicable minimum, after the preliminary plan is approved.*

The Application is proposing to construct 72 percent of the total development for Phase 1 (130,000 sq. ft. ) within the first 5 years. This includes all frontage improvements along Aspen Hill Road and Connecticut Avenue, and the onsite amenities shown on the Site Plan. The APF approval for Phase 2 that is subject to the extension request, is to allow the building permit to be filed for Phase 2, (which is 28 percent of total construction) within 10 years of the Preliminary Plan approval.

- ii. To allow a validity period longer than the specified minimum, the Board must find that the size or complexity of the subdivision warrants the extended validity period and would not be adverse to the public interest. The Board must condition a validity period longer than the specified minimum on adherence to the proposed development schedule or phasing plan and may impose other improvements or mitigation conditions if those conditions are needed to assure adequate levels of transportation or school service during the validity period.

Due to the complexity of developing Medical Offices, the applicant needs this additional time for Phase 2 to justify the need for growth and allocate funding. The Project will meet the motor vehicle adequacy tests for both Phases. Because it will generate fewer than 50 new pedestrian trips, new non-motorized trips, and new transit trips, the Project is exempt from reviewing these systems for adequacy and no off-site improvements are required. However, as previously stated, the Applicant is proposing a 10-foot wide sidepath along the property's frontage and a new traffic signal as a part of Phase 1. Therefore, the project will not adversely impact the public interest and the Planning Board approves the request.

#### Vehicular Site Access Point and Circulation

The site is accessible from Connecticut Avenue and Aspen Hill Road. Vehicular access to the Site from Connecticut Avenue is available via a shared driveway north of the Site, which also provides access to the Home Depot. Access to the site via Aspen Hill Road is restricted to Kaiser Permanente employees and emergency personnel. An automated gate will be installed to prevent public access. The access gate is situated approximately 100 feet north of the entrance to Aspen Hill Road to provide internal queuing for employees accessing the Site and prevent queuing on Aspen Hill Road.

The Applicant is proposing a full traffic signal at the intersection of Connecticut Avenue and the shared driveway, including updated crosswalks, ADA accessible ramps, and median refuge islands. This traffic signal is strongly supported by the Planning Board and MCDOT, will better regulate vehicular access onto the site for patients and visitors, and enhances pedestrian safety at the intersection. The Applicant completed a signal warrant analysis to assess the feasibility of a traffic signal at this location. Six vehicular volume warrants are met under the existing conditions and the proposed future conditions (Phase 1). The Maryland State Highway Administration (SHA) reviewed the signal warrant analysis and approved the installation of the traffic signal. The Applicant will design and construct the new signal but must coordinate with SHA to determine the ultimate cycle length and submit a Design Request for the proposed traffic signal location.

Tightening vehicle turning radii is recommended in the 2019 *Aspen Hill Vision Zero Study*. To slow vehicle turning movements and shorten crossing distances for pedestrians, the curb radii at the entrance from Aspen Hill Road are reduced to 20 feet and the curb radii at the intersection with Connecticut Avenue are reduced to 25 feet.



### Parking

On-site parking is provided in four surface parking lots for Phase 1; a structured parking garage will be constructed on the northeastern surface parking lot to accommodate increased parking demands associated with Phase 2 of the development.

The Applicant is requesting adequate parking to accommodate its members, staff, and the community members, who are invited to use the amenities on-site. Although a Parking Waiver was included with the original application to provide more than the allowed maximum number of parking spaces (which is a ratio of 4.0 spaces per 1,000 square feet of building area), a parking waiver is not necessary because the additional spaces are not limited or restricted in their use. Therefore, the Project will provide 542 spaces for Phase 1 (a ratio of 4.2 spaces per 1,000 square feet), and 846 spaces for Phase 2 (a ratio of 4.7 spaces per 1,000 square feet). These parking ratios will allow for adequate employees and members/patients to park on the Property without encroaching on the neighborhood.

### Public Transit Service

Four local bus routes operate along Connecticut Avenue and Aspen Hill Road adjacent to the site:

- **Ride On Route 26:** Operates Monday-Sunday between the Glenmont Metro station and the Montgomery Mall Transit Center, with intermediate stops at the Twinbrook Metro station, White Flint Metro station, and Rock Spring.
- **Ride On Route 34:** Operates Monday-Sunday between Bel Pre Road and Friendship Heights Metro station, with intermediate stops at the Bethesda Metro station, Medical Center Metro station, Kensington, Wheaton Metro station, and along Veirs Mill Road.
- **Ride On Route 41:** Operates Monday-Sunday between the Glenmont Metro station and Bel Pre Road, operating primarily along Connecticut Avenue.
- **Metrobus L8:** Operates Monday-Sunday between Aspen Hill and Friendship Heights Metro stations, with stops in Kensington, Chevy Chase Lake, and Chevy Chase Circle, operating primarily on Connecticut Avenue.

The existing Ride On/Metrobus stop on the west side of Connecticut Avenue is being moved approximately 300 feet north to be located closer to the new traffic signal on Connecticut Avenue.

#### Pedestrian and Bicycle Facilities

Aspen Hill is designated as a Bicycle Pedestrian Priority Area (BiPPA), where the enhancement of bicycle or pedestrian traffic is a priority. As such, the Applicant is providing a 10-foot sidepath and a 6-foot landscaped buffer along the Site's frontage with Connecticut Avenue and Aspen Hill Road. The sidepath on Connecticut Avenue is designed to be converted to a two-way separated bike lane at a later date, as recommended by the 2018 *Bicycle Master Plan*. The sidepath will be extended along the Shell gas station frontage to the intersection of Aspen Hill Road and Connecticut Avenue, within the SHA right-of-way.

An internal sidewalk network (6-feet wide) along the primary north/south driveway, the shared driveway with Home Depot, and the south side of Phase 1 provides safe pedestrian access within the site. Crosswalks are provided where all sidewalks cross drive aisles or connect through parking lots and along the main entrance loop, to facilitate access from the parking lot into the facility.

The Site is providing 41 bicycle parking spaces, 32 long-term and nine short term. Short-term bike parking is located along the building's main entrance loop and adjacent to the long-term bike lockers on the southeast side of the Site. Additionally, runnels are provided on both staircases leading from Connecticut Avenue to allow bicycles to better navigate the grade change.

#### Local Area Transportation Review

Per the 2016-2020 Local Area Transportation Review Guidelines, a traffic study is required to satisfy the motor vehicle adequacy analysis if the proposed use generates more than 50-person trips within the weekday peak hours. As the total number of peak-hour vehicle trips serving the site exceeds 50 trips per peak hour, the Applicant was required to complete the motor vehicle system adequacy test, including a traffic impact study (TIS). The pedestrian, bicycle, and transit adequacy analyses were not triggered for this Project.

Vehicle trip generation for the Site was analyzed using the ITE Trip Generation Rates for a medical office building and adjusted based on the



mode split assumptions for the Aspen Hill Policy Area. The Site is replacing an existing office building and will generate a marginally higher number of trips in Phase 1, and a substantially higher number of trips following the completion of Phase 2. In Phase 1, the site is projected to generate 372 person trips during the AM peak hour and 594 person trips during the PM peak hour. Compared to the existing office building, this is an increase of only 9 person trips in the AM peak period. In Phase 2, the Site is projected to generate 496 person trips during the AM peak hour and 824 during the PM peak hour. As detailed below, vehicular delays at study intersections are not exceeded during the PM peak period.

Peak Period	Auto Driver	Auto Passenger	Pedestrian*	Transit	Bicycle	Person Trips
<b>Phase 1</b>						
AM	276	68	28	11	17	<b>372</b>
PM	441	108	45	17	28	<b>594</b>
<b>Phase 2</b>						
AM	369	90	37	14	23	<b>496</b>
PM	611	150	63	24	39	<b>824</b>
*Pedestrian trips are the sum of all transit and bicycle trips generated by the project						

The traffic impact study analyzed 13 nearby intersections. The Aspen Hill Policy Area is a yellow policy area, which applies the critical lane volume (CLV) level of standard for study intersections with a CLV of 1,350 or less; the Highway Capacity Manual (HCM) delay-based level of service standards is used to analyze signalized intersections with a CLV of more than 1,350. Of the 13 intersections analyzed, two exceeded the 1,350 threshold and were analyzed by HCM delay: Connecticut Avenue / Aspen Hill Road (AM peak period) and Georgia Avenue / Bel Pre Road (AM peak period). The HCM congestion standard for intersections within the Aspen Hill Policy Area is 59 seconds. Based on the results of the HCM analysis, the Connecticut Avenue / Aspen Hill Road intersection exceeds the policy area congestion standard of 59 seconds in the AM peak period of the future conditions. The Applicant proposed signal timing adjustments that will mitigate the site's vehicular impact and reduce delay at the intersection below the policy area threshold. However, these signal timing adjustments were not accepted by MCDOT. Per the LATR Guidelines, pedestrian and bicycle improvements qualify as mitigation when the policy area congestion standard is exceeded. To satisfy the LATR test, the Applicant is extending the sidepath off-site on both Connecticut Avenue and Aspen Hill Road. These improvements will prioritize bicycle and pedestrian movement, as stipulated by Aspen Hill's BiPPA

designation. The intersection of Georgia Avenue / Bel Pre Road does not

Intersection	Existing Conditions		Background Conditions		Phase 1 Future Conditions		Phase 2 Future Conditions	
	AM	PM	AM	PM	AM	PM	AM	PM
Connecticut Avenue / Aspen Hill Road	61.1	--	61.5	--	70.4	--	72.9	--
<i>Signal timing modifications</i>	--	--	--	--	53.6	--	54.8	--
Georgia Avenue / Bel Pre Road	57.1	--	57.3	--	--	--	58.3	--
<i>HCM delay shown as seconds; HCM delay standard for Aspen Hill Policy Area is 59 seconds</i>								

exceed the policy area threshold and no mitigation is required.

#### Transportation Demand Management

In accordance with Montgomery County's recently adopted countywide transportation demand management legislation, the Applicant must implement a Level 1 Basic Plan for Phase 1, and upgrade to a Level 2 Action Plan following the completion of Phase 2:

**Level 1 Basic Plan** must implement County-led strategies at the Project and must include:

3. Appoint a transportation coordinator and demonstrate commitment to cooperate with the department's programs – including assistance such as distribution of information on commuting options, coordinating with the department to conduct commuting-related outreach, and participation in a commuter survey.
4. Notification – Each owner of a project is required to notify the Department in writing within 30 days of receipt of a final U & O certificate from the Department of Permitting Services and communicate any change in the Transportation Coordinator's contact information.
5. Access to the Project - provide space in the Project for the promotion of TDM.
6. TDM Information - display TDM-related information in highly visible location(s)

**Level 2 Action Plans** require of applicants/owners in Orange and Yellow Areas, all of the elements of Level 1 plans, plus:

7. Selection of strategies to be implemented to achieve the NADMS goals (5% higher than the District's NADMS goal)



8. Commitment to fund and implement the Plan
9. Self-Monitoring to determine if the Project-based TDM Plan is contributing toward achievement of the District's goals.
10. Committing funding to implement the specific actions.
11. Biennial Report – must be provided to the County in alternating years.
12. Addition and/or Substitution of Strategies – if the strategies initially selected have not made progress towards the goal by four years after the date of final occupancy.
13. Additional Funding Commitment – if the project still has not made progress towards the goal within 6 years after final occupancy.
14. Performance Incentives - the owner may be eligible for annual performance incentives established by MCDOT for continued contribution over multiple years toward achievement of commuting goals, including reductions in TDM fees or other financial benefits, as established in the Executive Regulation.

This approval must be obtained from MCDOT prior to issuance of any building permit by the Department of Permitting Services.

#### Other Public Facilities

The proposed development will be served by public water and sewer systems. Fire and Rescue has reviewed the application and determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations and health care will continue to be sufficient following the construction of the Project. Electric, gas and telecommunications services will also be available.

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.

#### Environmental Guidelines

Staff approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420200710 on December 10, 2019. The approximately 10.03-acre Property is currently developed with a two-story office building and associated asphalt surface parking lots. There are no forest or streams on-site but there is an engineered floodplain associated with an off-site stormwater management facility. All

proposed structures are outside of the floodplain and associated 25' Building Restriction Line (BRL). The proposed plan is in conformance with the *Environmental Guidelines*.

#### Final Forest Conservation Plan

The Applicant has submitted a Final Forest Conservation Plan (FFCP) with the Preliminary Plan and Site Plan. This FFCP amends FFCP #SC2020011, approved with the sediment control plan associated with the demolition of the existing development. The forest conservation requirements of 1.68 acres were met in an off-site mitigation bank as a part of the approval of FFCP #SC2020011. The FFCP shows the proposed development and all disturbance necessary for development. As submitted, and including approval of the accompanying variance request, the Plan complies with Chapter 22A, Forest Conservation.

Due to the engineered floodplain being associated with an off-site stormwater management pond that would only occur if the dam were in breach, Planning Staff is not establishing a conservation easement, per Section 22A-12(b)(2).

#### 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 the removal or CRZ impact to 1 Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a Variance. An applicant 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 law requires no impact to trees that: measure 30 inches or greater, DBH; are part of a historic site or designated with a 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. The Applicant submitted a Variance request on April 1, 2020 to impact one (1) tree, tree #12, that is considered a high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. The submitted Variance request missed one additional tree (# 1) which is a specimen tree proposed to be impacted, but not removed. Tree #1 is a 35" White Mulberry in poor condition with 31% impact to its critical root zone (CRZ). Tree #12 is a 57" White Oak that is located off-site. The Variance request indicates that tree #12 will have a 3.51% impact to its CRZ. However, the last iteration of the Plan has removed the disturbance that would impact tree #12. A corrected Variance request adding the impact to tree # 1 must be submitted prior to approval of the Certified Preliminary Plan.

#### Unwarranted Hardship

Tree #1 is located on the western property line, adjacent to the existing parking lot. The CRZ for tree #1 is currently impacted by this parking lot. The Applicant has proposed a walking path with fitness equipment along the western property line. The Applicant would not be able to construct this path without impacting the CRZ of tree #1. Thus, the Applicant has a sufficient unwarranted hardship to grant a Variance request.

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 Board makes the following findings necessary to grant the Variance:

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

As noted above, the Applicant cannot construct the fitness path improvements along the western property line without the approval of this variance due to location of the path being adjacent to the existing parking lot. Thus, granting the variance will not confer a special privilege on the 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 requested variance is based on the location of the tree, rather than on conditions or circumstances which are the result of actions by the Applicant.

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 a result of the need to provide a fitness path and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality due to the project establishing new swim facilities and treating potential water runoff on site.*

The Applicant has minimized the impacts on trees by restraining the disturbance necessary to construct the fitness path. No variance trees are proposed for removal therefore no mitigation is required for these impacts. The project will not violate State water quality standards or cause measurable degradation in water quality.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Applicant received approval of its stormwater management concept from the Montgomery County Department of Permitting Services, Water Resources Section on June 15, 2020. The concept meets required stormwater management goals using a combination of ESD approaches including rain gardens, permeable paving, and microbio retention areas. The Property is not subject to a water quality plan, and there are no floodplain requirements. The requirements of Chapter 19 for stormwater management are satisfied.



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

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 17 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 Vice Chair Fani-González, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 30, 2020, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board