



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

MCPB No. 20-065  
Preliminary Plan No. 120200140  
**Wilgus**  
Date of Hearing: July 23, 2020

**AUG 13 2020**

**RESOLUTION**

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

WHEREAS, on January 13, 2020, Wilgus-Montrose Associates LLC; ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create up to 107 townhouse lots, two (2) lots for stacked townhouses, one (1) lot for a low-rise multi-family building, one (1) lot for a mix of 15,000 square feet of ground floor commercial uses and multi-family units, three (3) park parcels, eleven (11) private road parcels, and seven (7) HOA parcels for a maximum of 745 dwelling units and 1,040,789 square feet of total development on 16.64 acres of land in the CR-2.0, C-1.0, R-1.5, H-200', CR-2.0, C-0.25, R-1.75, H-75', and CRN-0.75, C-0.0, R-0.75, H-50' zoning districts, generally bound by Montrose Road to the north, Towne Road to the east, Montrose Parkway to the south, and East Jefferson Street to the west ("Subject Property"), in the Metro Station Policy Area and 2018 White Flint 2 Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's Preliminary Plan application was designated Preliminary Plan No. 120200140, Wilgus ("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 13, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 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, 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. 120200140 for up to 107 townhouse lots, two (2) lots for stacked townhouses, one (1) lot for a low-rise multi-family building, one (1) lot for a mix of 15,000 square feet of ground floor commercial uses and multi-family units, three (3) park parcels, eleven (11) private road parcels, and seven (7) HOA parcels on the Subject Property, subject to the following conditions:<sup>1</sup>

### **General Approval**

1. This Preliminary Plan is limited to a maximum of 1,040,789 square feet of total development, including a maximum of 1,025,789 square feet of residential uses and 15,000 square feet of non-residential uses, for a maximum of 745 dwelling units including up to 107 townhouse units on 107 lots, 638 multi-family units on four (4) lots (including two (2) lots for 34 stacked two-over-two townhouses and two (2) lots for multi-family buildings), and 15,000 square feet of non-residential uses on one lot shared with multi-family units, with additional various park/open space parcels, private road parcels, and HOA parcels.

### **Adequate Public Facilities, Preliminary Plan Validity, and Outside Agencies**

2. The determination of Adequate Public Facilities (“APF”) and Preliminary Plan will remain valid for one hundred and twenty (120) months from the date of mailing of this Planning Board Resolution, according to the phases outlined below. Because the APF and Preliminary Plan validity periods are longer than the typical five years, phasing schedules in accordance with Sections 4.1.C.9.b, 4.2.G.2.b.iv, and 4.3.J.5.b of the Subdivision Regulations are required. The phasing schedule for the APF validity period is as follows:

- Phase I: Building permits issued for a minimum of 23 dwelling units within 60 months from the 30th day after the Resolution is mailed;
- Phase II: Balance of building permits issued within 60 months from the expiration of the Phase I APF validity period;

With respect to the phasing schedule for the Preliminary Plan validity period, plats must be recorded and building permits issued as follows:

- Phase I: Plats recorded for 24 lots (23 townhouse lots and 1 multi-family lot) and building permits issued for 127 dwelling units, including MPDUs, within 36 months from the 30th day after the Resolution is mailed;

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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.

- Phase II: Plats recorded for 22 lots (20 townhouse lots and two (2) stacked two-over-two townhouse lots) and building permits issued for 54 dwelling units, including MPDUs, within 36 months from the expiration of the Phase I Preliminary Plan validity period;
- Phase III: Plats recorded for 64 lots (64 townhouse lots) and building permits for 64 dwelling units, including MPDUs, within 36 months from the expiration of the Phase II Preliminary Plan validity period;
- Phase IV: Plats recorded for one (1) lot (one (1) lot for three (3) multi-family buildings) and building permits issued for 500 dwelling units, including MPDUs, and 15,000 square feet of retail shared with multi-family units within 12 months from the expiration of the Phase III Preliminary Plan validity period.

Outside Agencies

3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 9, 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. 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 30, 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.
6. 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 4, 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 Fire Department Access and Water Supply Section may amend if the amendment does not conflict with other conditions of the Preliminary Plan approval.



## **Environment**

### Noise

7. A noise study must be submitted with the initial Site Plan to M-NCPPC Staff from an engineer that specializes in acoustical treatment, showing existing noise impacts on the Property and the 20-year projected noise impacts based on the proposed development. The Applicant will mitigate outdoor areas to ensure that outdoor amenity and recreation areas are constructed to attenuate projected noise levels below 65 dbA Ldn, where reasonable and as determined by M-NCPPC.

### Forest Conservation

8. The Applicant must comply with the following conditions of approval of the Preliminary Forest Conservation Plan, approved as part of this Preliminary Plan;
  - a) The applicant must submit a Final Forest Conservation Plan for the entire property with the first site. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.
  - b) The Final Forest Conservation Plan must be approved prior to any demolition, clearing, grading or construction occurring on the Property.
  - c) Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Cabin John Creek watershed to satisfy the off-site forest conservation requirements. If the credit is not available in the Cabin John Creek watershed, the offsite requirement may be met by purchasing from a mitigation bank elsewhere in the County, subject to Staff approval.
  - d) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
  - e) The Limits of Disturbance (LOD) to reconstruct the Master-Planned Breezeway must be added to the Preliminary Forest Conservation Plan and the worksheet appropriately adjusted as part of the Certified Preliminary Plan. Any other required off-site improvements that will expand the LOD should be added as well.

## **Transportation**



9. Prior to the issuance of the final Use and Occupancy Certificate for the first phase of development, the Applicant must restripe the master-planned roadways along the site frontage including East Jefferson Street, Montrose Parkway, Montrose Road, and Towne Road (as applicable) to have travel lanes that are ten feet wide, subject to the satisfaction or deferment of the Montgomery County Department of Transportation.
10. Subsequent to MCDOT approval of the traffic signal construction plans and issuance of the right-of-way permit, the Applicant shall furnish and install a traffic signal at Montrose Parkway and Stonehenge Place, subject to the satisfaction of the Montgomery County Department of Transportation. The traffic signal must be operational prior to the issuance of the 43rd townhouse building permit for the site.
11. The Applicant shall construct a twelve-foot wide Breezeway along Montrose Parkway between E. Jefferson Street and Street C during Phase I of the development and the remaining section between Street C and Towne Road at the time of Use and Occupancy Permit for the first high-rise building, maintaining no less than six (6) feet separating the facility and the roadway per the *Parking Lots to Places: White Flint 2 and Rock Spring Urban Design Guidelines*. The required facility and separation should be maintained along the entire extent of the Site's frontage.
12. The record plat shall show the dedication along the East Jefferson Street frontage ensuring no less than twenty-five feet is available between the edge of the eastern curb and the Property line.
13. Prior to issuance of the final Use and Occupancy Certificate of the first phase of development, the Applicant must provide a protected bicycle intersection at Montrose Parkway and East Jefferson Street and the master-planned separated bicycle lanes along East Jefferson Street. The Applicant may provide a fee-in lieu of construction to the Montgomery County Department of Transportation subject to MCDOT review and approval.
14. Prior to issuance of the final Use and Occupancy Certificate for the first high-rise multi-family building, along the Towne Road frontage, between the western curb edge and Property line, the Applicant must provide (from curb to Property line) a six-foot landscaped tree panel, a ten-foot two-way separated bike lane facility, and a sidewalk no less than six feet. The separated bike lanes should be depressed between the landscaping and sidewalk with a minimum of a 2.5" curb reveal.
15. Design and construct, prior to issuance of the final Use and Occupancy Certificate, a protected bicycle intersection, subject to the satisfaction of the

Montgomery County Department of Transportation, where the separated bicycle lanes meet the sidepath (to be reconstructed to 12-feet-wide) on Montrose Parkway.

16. The Project must execute a Project-based Transportation Demand Management (TDM) Plan and must obtain approval from the Department of Transportation for the TDM Plan prior to the first Use and Occupancy Certificate.
17. Design and construct prior to issuance of the final Use and Occupancy Certificate and dedicate the segment of Street A between Stonehenge Place and Street C as a private street, subject to the satisfaction of the Montgomery County Department of Transportation.

#### Existing Frontage Improvements

18. To be shown on the record plat, the Applicant must meet the intent of the Bicycle Facilities Guidelines by dedicating 60 feet from centerline to the right-of-way along the Property's frontage of Towne Road for the future bicycle and pedestrian facilities along Towne Road.
19. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to construct 10-foot two-way separated bike lanes and a six-foot wide sidewalk along the Property frontage on Towne Road, five-foot wide sidewalks along both E. Jefferson Street and Montrose Road, and a twelve-foot wide shared-use path along Montrose Parkway.

#### New Streets

20. The Applicant must dedicate the rights-of-way for Street C and the Stonehenge Place extension to ensure construction of all necessary road improvements for all public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes, or as modified by MCDOT's approved design exceptions.

#### Private Roads

21. The Applicant must provide the Private Roads, labeled as Street A and Street B on the Preliminary Plan, including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan, with final details to be determined at subsequent Site Plan (collectively, the "Private Roads"), subject to the following conditions:
  - a) The record plat must show the Private Roads in a separate parcel.



- b) The Private Roads must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq.
- c) Before issuance of any residential building permit that requires access via a private road, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Roads have been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code MC-2005.02, as modified on this Preliminary Plan, with final details to be determined at subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

### **Underground Utilities**

- 22. The Applicant must underground existing and future utility poles located along the Property's frontage on Towne Road, between Montrose Road and Montrose Parkway. The existing utility pole located at the intersection of Montrose Road and Towne Road identified as PEPCO 766444-199097 may remain.

### **Record Plats**

- 23. There shall be no clearing or grading of the Site prior to recordation of plat(s).

### **Easements**

- 24. The record plat must show necessary easements.
- 25. Provide a five-foot Public Utility Easement (PUE) along the Property's Montrose Road frontage.
- 26. The record plat must reflect a minimum four-foot-wide public infrastructure area adjacent to all Private Streets.
- 27. The record plat must reflect common ingress/egress and utility easements over all shared driveways.



Notes and Labels

28. The record plat must reflect all areas under common ownership.
29. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Liber 28045 Folio 578 ("Covenant").

**Other Payments**

School/Park Site

30. In lieu of satisfying the Sector Plan recommendation for the dedication of land for a school site or athletic fields that can be used by MCPS and approximate the size of a local park, the Applicant shall make a financial contribution to the Montgomery Parks Department for land acquisition for parks or capital project(s), based upon \$0.80 per square foot of non-MPDU optional method density used within the CR zoned portion of the Subject Property. The final calculation of payment and CIP will be determined at each Site Plan. The financial contribution shall be phased and paid on a per unit basis at the time of building permit, derived from the percentage of elementary school students generated by each unit type for the entire Preliminary Plan.

**Moderately Priced Dwelling Units (MPDUs)**

31. The Applicant shall provide a minimum of 15% MPDUs as required by the Sketch Plan approval and the future Site Plan shall provide 15% MPDUs in each mid-rise apartment and within each building for the three (3) high-rises.

**Certified Preliminary Plan**

32. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
33. 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.*
34. 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) The Towne Road Section/Bicycle Master Plan Detail adjacent to the Site should include the following elements between the roadway curb and the Property line:
  - i) 6-foot landscaped buffer adjacent to the roadway curb (minimum);
  - ii) 10-foot two-way separated bike lanes; and
  - iii) 6-foot sidewalk (minimum) adjacent to Property line.
- c) Relabel Central Public Park to Central Park or Neighborhood Park.

### **Future Site Plan**

- 35. Before clearing or grading of the Property or recording a plat for the Property, the Applicant must receive Staff certification of a Planning Board-approved Site Plan. The number and location of site elements, including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, and bike paths will be determined through Site Plan review and approval.
- 36. If an approved Site Plan or 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 or Site Plan amendment.
- 37. Evaluate additional sustainable features, as previously conditioned with Sketch Plan approval, to enhance the development, including energy conservation to further the Sector Plan's recommendations.
- 38. Continue to coordinate with Planning and Parks on the previous design recommendations provided to enhance the Neighborhood Park.
- 39. The following items must be addressed prior to filing and during the review of subsequent Site Plans that are adjacent to the Cherington Community:
  - a) The 20-foot wide landscape buffer abutting the Cherington HOA townhouse community must be installed as part of any Site Plan that is filed adjacent to the Cherington Community. The Cherington landscape design drawings dated April 7, 2020 must be given consideration in development of the landscape buffer to be included in the Site Plan submission.
  - b) Careful consideration must be given to the timing to install the buffer plantings. Frequency of watering and care for the new plantings must be included in the required planting schedule.
  - c) Long-term maintenance of the buffer must be assured, with the newly formed HOA for the development being responsible for the buffer. These provisions must be included in the HOA bylaws.

40. The Site Plan(s) must include the installation of a 6-feet - 6-inch-high fence the length of the vegetated buffer along the Cherington property line. The type of fence, a synthetic wood-like material, and installation timing must be reviewed and approved during review of the Site Plan.
41. The future Site Plan will coordinate with the adjacent community and Staff regarding surface drainage water that may adversely impact the Cherington community.
42. Understanding there are utility and easement conflicts adjacent to the extension of Stonehenge Place, the Applicant, at the time of applicable Site Plan, shall continue to explore with MCDOT and/or MCDPS the feasibility of providing a planted buffer between the row of townhomes on Castle Gate Road and Stonehenge Place Extended.
43. As part of the initial Site Plan, the Applicant shall submit a phasing plan addressing the planting of the buffer area to the north and the townhouse development to the immediate south. This buffer area shall be planted as soon as feasibly possible after the clearing and grading of the entire site for the construction of the townhouses and stacked two-over-two townhouses included in the first phase of redevelopment.

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 proposed lot sizes and layout of the subdivision are appropriate given its location, the type of use contemplated, and the applicable requirements of Chapter 59 of the Montgomery County Code. The Preliminary Plan will accommodate development on the Property at an appropriate and efficient location, with appropriate building setbacks from existing and proposed roadways and the abutting property. Generally, the parcel plan for the 16.64-acre tract is largely in response to land constraints of the western 6.5-acre portion of the Site, the abutting townhouse development, the larger surrounding roadway network, and internal circulation needs. Consistent with the recommendations of the Sector Plan, the proposed lots accommodate a variety of



uses at various development intensities, which includes traditional townhomes, stacked townhomes, high-rise multi-family, and high-rise mixed-use buildings.

The 6.5-acres of land on the western portion of the Site is narrow and has frontage along two existing roadways – Montrose Parkway and E. Jefferson Street. The proposed layout of the 64 townhouse lots has a compatible relationship with the existing Cherington townhouse community to the north, which will be separated by a proposed vegetated buffer. The current arrangement of the 16 townhouse lots closest to the Cherington townhomes has been rotated west to east so that the side facade of only a few units are exposed to the north, which addresses privacy needs and concerns.

The proposed townhouse lots located in the center of the Site are arranged to take advantage of site features such as the proposed Central Park. Also, the proposed townhomes on the west and central sections of the Site can yield smaller lots that are compatible with the existing lot sizes of the abutting townhouse development. Finally, the proposed residential lots in the Project are oriented both north to south and west to east which offers variation in the arrangement and therefore visual interest at the street level.

The Project's roadway design also achieves improved pedestrian, bicycle, and vehicular circulation. Additional parcels are proposed for an internal roadway network and the provided rights-of-way are adequate to support transportation and utilities. As required, all proposed lots front onto a public or private road, sidewalks are provided, and access is adequate to serve the lots for emergency vehicles. As previously noted, the Project includes two new north-south streets (Stonehenge Place extension and Street C) connecting Montrose Parkway and Montrose Road, two new east-west streets (Streets A and B) connecting East Jefferson Place to Stonehenge Place to Public Street C, and a new through-block shared street connecting two new street intersections with the East Urban Plaza. A third new north-south street (Private Street D) will offer access between Street A and an alley for those townhouses located between the Central Park and the adjacent apartment building.

The internal streets are designed as short blocks to comply with Chapter 50 of the Montgomery County Code. The short blocks are supportive of walking and bicycling, which is a prominent goal of the *White Flint 2 Sector Plan*. Additionally, a significant length of Private Street B (through the western 6.5-acre portion of the Site) is shifted south towards Montrose Parkway to create a greater degree of separation between the roadway and the Cherington townhouses.

Further, in accordance with Section 50.4.3.B of the Subdivision Regulations, the layout for the four (4) lots for multi-family and mixed-use buildings provides for

efficient accessibility and circulation via appropriate sidewalks that connect to other uses within the Site and orients access points for direct building access and parking. The Preliminary Plan also provides for required public sites and adequate open areas. For the above-stated reasons, the proposed lot sizes and layout of the subdivision are appropriate given the location of the Site, the type of use contemplated, and the applicable requirements of Section 50.4.3.C of the Subdivision Regulations.

Further, the Preliminary Plan meets the dimensional requirements for the CRN and CR zones as specified in the Zoning Ordinance, as shown in Table 1 below, in relation to maximum density, height, setback compatibility, and minimum open space.

Table 1: Development Standards in the CR and CRN Zones

Description	Required/ Permitted (CR-2.0, C- 1.0, R-1.5, H- 200)	Required/ Permitted (CR-2.0, C- 0.25, R-1.75, H-75)	Required/ Permitted (CRN-0.75, C-0.0, R- 0.75, H-50)	Proposed
<b>Total Tract Area</b>	410,253 sf.	174,332 sf.	140,438 sf.	725,023 sf. (16.64 ac.)
<b>Maximum Density</b>				
Total	820,506 sf.	348,664 sf.	105,328 sf.	up to 1,040,789 sf.
Commercial	410, 253 sf.	43,584 sf.	0 sf.	15,000 sf
Residential	615,380 sf.	305,082 sf.	105,329 sf.	up to 1,025,789 sf
<b>Maximum Height</b>	200 ft.	75 ft.	50 ft.	up to 50 - 200 ft.
<b>Height Compatibility</b>	No structure may protrude beyond a 45-degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the abutting or confronting Residential zone.			Height compatibility complies
<b>Minimum Public Open Space</b>	10%/54,450 sf			Minimum 10%/54,450 sf. to be provided; Sketch Plan anticipates up to 11%/60,984 sf.



<b>Setbacks</b>	Determined by site plan.	To be set by site plan
<b>Setback Compatibility</b>	The minimum rear setback is equal to 1.5 times the minimum rear setback required for a detached house on the abutting property.	Project complies with setback compatibility requirements as measured from property lines with all abutting residential lots
<b>Form</b>	Determined by site plan.	To be addressed by site plan
<b>Minimum/Maximum Parking Spaces Permitted</b>	3.5 /1,000 sf of gross leasable area (commercial)/ 1 DU or 2 DU (by residential density)	Determined by site plan.

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

The Preliminary Plan substantially conforms to the recommendations within the *2018 White Flint 2 Sector Plan*, as outlined below for various areas of emphasis.

a. Land Use

Generally, the Sector Plan intends to: 1) Concentrate additional density in areas with potential to create mixed-use activity centers in support of ongoing County efforts to transform these areas; 2) Promote compatibility among new development, adjacent high-density development, and existing low-density residential communities; and 3) Identify properties that could develop as unique mixed-use neighborhood centers to serve established residential communities.

More specifically, the *White Flint 2 Sector Plan* is organized into four districts. The Subject Property is located within the Rockville Pike-Montrose North District. These districts are further divided into smaller areas to provide more specific recommendations. The Sector Plan identified the Wilgus property and indicated that “undeveloped portions of the Wilgus property have the greatest potential for new development. Redevelopment in this area would serve as an important link between the Executive Boulevard District and the Pike and Rose



development” (p.37). The Sector Plan envisions the Wilgus properties contributing to a walkable, pedestrian-friendly environment.

Further, for the Wilgus property, the Sector Plan notes that the “land use and zoning recommendations for the Wilgus property will permit greater intensities and building heights via the CR Zone on the eastern portion, and lower heights and densities via the CRN Zone on the western portion adjacent to the existing Cherington townhouses. At least 1.25 acres of open space should be provided in the Wilgus property when it is developed, either on the area south of the existing townhouses and/or as a neighborhood green on the central or eastern portion of the Wilgus property. If the area south of the Cherington townhouses is developed with residential units, there should be appropriate transitions between the two communities, including landscaping”.

Additionally, for the 3.5-acre property (Parcel N273) that is east of the intersection of Montrose Parkway and East Jefferson Street, the Sector Plan recommends that “during the development review process, pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use. Ensure that new residential development is compatible with the adjacent townhouse community”. An assessment of this requirement is provided under the Forest Conservation Plan discussion in Chapter 5 of the Staff Report.

#### Density and Building Height

The proposed density and building heights are consistent with the Sector Plan’s recommendations. Proposed residential townhouses west of Stonehenge Place are within the 50-foot height limit; residential townhouses and mid-rise buildings, within the middle segment of the development are within the 75-foot height limit; and the area west of Towne Road is within the 200-foot height limit.

#### Design and Connectivity

Several of the Sector Plan’s design and connectivity recommendations for the Wilgus Property are to: 1) Establish a pattern of short blocks and internal streets to promote walkability; 2) Reduce building heights toward the existing Cherington townhouse development to establish a compatible relationship with the existing residential development; 3) Create open spaces, including an area with a minimum of 1.25 acres, for public use that are connected to the overall open space network; and 4) Provide screening via fencing, a hedge, tree planting or other appropriate means between the existing Cherington townhouses to the north, and any new development to the immediate south (p.38).

Overall, the Preliminary Plan achieves these design and connectivity requirements, including providing a total of 1.43 acres of public open space, including a 0.75-acre central park. This park and the western open space are linked to the Montrose Parkway. Stonehenge Place and Street “C” are proposed

as public streets and building heights transition from the tallest along Towne Road to lower level townhouses, which are primarily adjacent to the existing Cherington townhouses.

#### Affordable Housing

The Sector Plan's housing chapter declares that "15% MPDUs as the highest priority public benefit for all new residential development unless the property is required to dedicate land for a school site or athletic fields that be used by Montgomery County Public Schools (MCPS) and approximate the size of a local park." The development will provide 15 percent MPDUs and proposes that 17 of its required 22 MPDUs for Phase 1 be comprised of lower-level units of 2-over-2 townhomes with the remaining dispersed though the townhouses. The final MPDU location plan will be finalized at the time of Site Plan.

#### Public Facilities

The 2018 Sector Plan recommends that "each and every development application should be thoroughly evaluated for a potential school site, notwithstanding any previous development approvals. It is this Plan's direction that the Planning Department will negotiate for maximum dedication of land for a school site and that this be the top priority benefit under the review process of projects proceeding under these plans" (p.96). During Sketch Plan, it was determined that the Applicant would be subject to a proportional financial contribution that would achieve contributing to the needed school site and would be further addressed at the subsequent Preliminary Plan. As part of this Application package, the Applicant is required to make a payment to the Commission which is required as a condition of approval of the Preliminary Plan to gain public benefit points. The contribution from the Applicant will be used for new parkland and new parks facilities on new parkland, and the new parkland and/or improvements must occur within the boundary of the *White Flint* or *White Flint 2 Sector Plans*.

#### Public Open Space

The Parks section of the *2018 White Flint 2 Sector Plan* also recommends to "create a minimum 1.25 acre open for public use at the Wilgus property when it redevelops." The Plan illustrates more than 1.25 acres of Public Open Space, which includes a central park and the required Common Open Space for the townhouse development on the Property.

Feedback for revisions to the earlier concept included a focus on three key areas: public ownership, park design, and tree conservation. Regarding ownership, the Parks Department will not accept the Neighborhood Park; therefore, it will remain in private ownership but with public access. Regarding park design, the topography needs to be addressed to make the park visible from the street for broad public invitation and use to overcome the existing down sloping of the



proposed park. Additionally, Planning and Parks have requested: 1) the expansion of the proposed buffer between the proposed bikeshare station and adjacent townhomes to help with tree save and appropriate separation from a public-serving park facility, 2) a terraced approach to dividing up the park by seamlessly transitioning to address the significant grading issues, and 3) addressing park fragmentation and lack of gathering spaces.

Additional Planning Department comments included: 1) Conduct more on-the-ground assessment to determine the extent that additional forest can be saved in the neighborhood park area and western park, 2) Consider an approach that preserves small trees with smaller root zones that have a greater chance of survival than larger trees that may become hazards to adjacent new homes, and 3) address the requirement to provide an alternative assessment for forest preservation per the approving resolution of the Sector Plan. These items were addressed in the Application and further explained under the Forest Conservation Plan section of the Staff Report.

#### Forest Retention on Western Portion of the Property

Montgomery County Council Resolution 18-979 approving the *White Flint 2 Sector Plan* included the following requirement to: "pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use."

In response to the Master Plan requirement, the Applicant submitted a response dated April 21, 2020, which outlined three options that were considered: (1) To preserve all of the wooded area in this parcel; (2) to preserve a portion of the wooded area; and (3) to try to preserve individual trees within the required 20-foot landscaped buffer between the new development and the adjacent Cherington townhouse community. The justification detailed in this letter broadly speaks to the hardship of preserving variance trees and the forest on the Property. The details of this justification can be found in the Forest Conservation section of this Resolution.

Because all of the variance-sized trees are within the forest that will be cleared, and because Staff has determined that it is infeasible to preserve all or some of the forest, on Parcel N273 as well as the remainder of the forested site closer to Metro, for the reasons stated above, the Planning Board concludes that the inability to remove the variance trees would render the Site undevelopable.

Given the proposed development and the Site configuration, the existing wooded areas are difficult to preserve while still maintaining a healthy and viable tree population. Instead, the Cherington Community is communicating very helpful and clear expectations on the elements they would prefer to be provided in the landscape buffer and screening. Thus, Staff is working with the Cherington Community and the Applicant to develop a robust landscaped buffer and



screening plan. The proposed conditions of approval require extensive landscape screening, a fence, evaluation of the existing retaining wall to be provided to the Applicant from the Cherington Community, evaluation of replacing and/or extending the retaining wall to ensure adequate water retention, and maintenance of landscaping and the fence to ensure the plantings survive and aesthetic appeal is retained. Final details of this buffer/screening area are to be determined at Site Plan.

b. Environment

The *White Flint 2 Sector Plan* provides broad environmental sustainability recommendations, including preserving natural resources, improving water and air quality, and reducing carbon emissions. Important natural resources recommendations include incorporating multiple layers of native vegetation in landscaping to provide food sources for declining populations of native pollinator species and to direct infill development to existing surface parking lots to preserve green spaces. Important water quality recommendations are to prioritize environmental public benefit points for tree canopy cover in the CR zone and promote the use of environmental site design (ESD) techniques to reduce impervious areas. Significant air quality recommendations are to increase forest and tree cover, incorporate green roofs or cool roofs, prioritize environmental public benefit points for tree canopy cover and energy conservation, and to promote site and building design for energy conservation.

A variety of public open spaces and cool roofs for the mid-rise and high-rise buildings, along with Building Lot Terminations (BLTs) are the primary environmental sustainability measures included with this Proposal. However, the Applicant was directed to pursue additional sustainable features, as conditioned with Sketch Plan approval, to enhance the development, including energy conservation to further the Sector Plan's recommendations. No additional sustainability measures are proposed with this Application. Therefore, Staff recommends carrying this condition into the Site Plan review to be addressed.

Specific to the Wilgus Property and preserving natural resources, the Sector Plan recommends to "establish a landscaped area between the southern boundary of the existing Cherington townhouse community and the proposed new development on the Wilgus Property."

c. Transportation

The Application is constructing and upgrading master planned transportation facilities.

#### Roadway Network

Montrose Parkway, Montrose Road, Towne Road, and East Jefferson Street all surround the Wilgus property. The Sector Plan recommends the extension from Stonehenge Place Extended (B-2), which is classified as a commercial business street with a minimum right-of-way of 60 feet, from its current terminus to Montrose Road.

Both Montrose Road (A-90), between East Jefferson Street and Towne Road, and Montrose Parkway (A-270), also between East Jefferson Street and Towne Road, are classified as arterials with minimum rights-of-way of 80 feet and 130 feet, respectively. Towne Road (M-4a) is classified as a major highway with a minimum 120-foot right-of-way, and East Jefferson Street (B-6) is classified as a commercial business street with a minimum 80-foot right-of-way.

Therefore, the Preliminary Plan shows the surrounding streets and adheres to the Sector Plan's recommended rights-of-way. However, some of the street cross-sections are not consistent with the County's Road Code standards. The Applicant has submitted a design exception request to MCDOT to deviate from the County's Road Code standards, which has been accepted.

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

#### **a. Roads and Other Transportation Facilities**

Existing transit service and proposed transportation facilities are adequate to serve the development proposed by this Application. The Site is located just under one mile from the Washington Metropolitan Area Transportation Authority's (WMATA) White Flint Metrorail Station. Ride On Bus service is also conveniently located adjacent to the Site with stops serving the 5, 26, 42, and 81 lines. The Ride On 5 line provides service between Twinbrook and Silver Spring; the Ride On 26 line provides service between Glenmont Station and Montgomery Mall; the 42 line provides service between White Flint Station and Montgomery Mall; and the 81 line provides service between Rockville Station and White Flint via Wootton Parkway and Montrose Road.

Montrose Parkway (SP-50) has an existing 10-foot-wide shared-use path along the southern portion of the Wilgus property. The *2018 White Flint 2 Sector Plan* proposes a Shared Use Path along Montrose Road (LB-1), a separated bike lane for Towne Road (LB-11), and either a standard bike lane or separated bike lane is proposed for East Jefferson Street (LB-4). As conditioned, the Preliminary Plan must be revised to reflect the Bike Plan recommendation of a twelve-foot-wide shared-use path along Montrose Road and the two-way bicycle lanes on Towne Road.



### Master-Planned Roadways & Bikeways

The Site is located within the White Flint 2 Bicycle and Pedestrian Priority Area (BiPPA) where road widths may be no greater than ten (10) feet unless adjacent to parking. The Applicant is required to coordinate with the Montgomery County Department of Transportation (MCDOT) to restripe the master-planned roadways along the Site frontage, subject to the satisfaction or deferment of the agency.

**Montrose Parkway:** Montrose Parkway, classified as a four (4) lane divided parkway, is master-planned to be 130 feet wide and the Site currently meets this width. The *2018 Bicycle Master Plan* calls for a sidepath along the Site frontage, which will accommodate both pedestrians and bicyclists and function as part of the County's breezeway network. The Applicant is required to widen the existing sidepath along the Site frontage from ten (10) feet to twelve (12) feet. Existing trees within the DOT right-of-way along Montrose Parkway will be impacted and are required to be replaced by the Applicant.

**Montrose Road:** The *2018 White Flint 2 Sector Plan* classifies Montrose Road as an 80-foot wide four (4) lane arterial. Today, the ROW segment adjacent to the Subject Property exceeds 80 feet. The *Parking Lots to Places: White Flint 2 and Rock Spring Urban Design Guidelines* recommend an 82' wide section with a six-foot sidewalk and seven-foot planting strip adjacent to the Site. The Application will provide a six-foot-wide sidewalk with a planting buffer of varied width (no less than seven feet near driveway entries), and a five-foot wide public utility easement (PUE) adjacent to the Site. The master-planned bicycle facility along Montrose Road is located on the north side of the road across from the Property and will not be implemented through this project.

**East Jefferson Street:** The *White Flint 2 Sector Plan* classifies East Jefferson Street as a four (4) lane 80-foot wide business street; however, the *Parking Lots to Places: White Flint 2 and Rock Spring Urban Design Guidelines* (page 122) recommends that the Site dedicate an additional ten (10) feet of ROW to provide a six (6) foot planting strip separating the bicycle and pedestrian facilities from the cartway, a ten (10) foot bidirectional separated bicycle lane, and a six (6) foot sidewalk. The Applicant will meet the intent of the Guidelines by providing an additional dedication to ensure no less than 25 feet is available between the roadway curb and the Applicant's Property line for the future bicycle and pedestrian facilities. However, since the Applicant's frontage along East Jefferson Street is minimal, the Applicant will pay an in-lieu fee rather than construct the master-planned separated bicycle lanes and associated protected intersection.



Towne Road: The *2018 White Flint 2 Sector Plan* classifies Towne Road as a four (4) lane divided major highway with a 120' width (exclusive of turn lanes). The *Parking Lots to Places: White Flint 2 and Rock Spring Urban Design Guidelines* do not include the segment directly adjacent to the Site, likely because it is constrained by capacity needs. Currently, the portion of Towne Road adjacent to the Site is seven (7) lanes wide, including turn lanes generally understood to service high volumes. The Applicant must provide (from the curb to Property line) a six-foot landscaped tree panel, a ten-foot two-way separated bike lane facility, and a sidewalk no less than six feet. The separated bike lanes must be depressed between the landscaping and sidewalk with a 2"-3" curb reveal.

The *Bicycle Master Plan* requires protected intersections where bicycle facilities meet. The separated bike lanes will need to transition into the sidepath on Montrose Road. The Applicant must provide a protected intersection where the separated bicycle lanes meet the sidepath on Montrose Parkway.

Stonehenge Place Extended: The *White Flint 2 Sector Plan* classifies the existing north-south segment of Stonehenge Place and its associated extension as a 60-foot business street. The existing right-of-way is approximately 70 feet, and the Applicant proposes to maintain the dimensions of the cartway through the Site. Since the road is proposed to have a target speed of 25 miles per hour, there are no formal bicycle facilities recommended.

#### Bicycle Parking

The amount and location of bicycle parking will be determined at the time of Site Plan.

#### Pedestrian Facilities

The Application will provide adequate pedestrian facilities along the Site's frontage, including the Montrose Parkway sidepath, which must be widened to be twelve feet wide. While the pedestrian connections on the eastern side of the Property are sufficient, there are concerns with the connections proposed near "Private Street B." The proposed sidewalk near the intersection of proposed "Street B" and Stonehenge Place is not separated from traffic, whereas six feet of landscaped separation is preferred between the sidewalk and road. Additionally, ramps and adequate crossings are not provided over proposed "Street B" at this location, nor at the western bend near East Jefferson Street. This is problematic as sidewalk facilities are not provided continuously on both sides of the Site. The Applicant must provide adequate crossing facilities over proposed "Street B" to facilitate safe and accessible pedestrian movements. Crossings should be adequately marked and may need to be raised or stop controlled due to the poor visibility for turning vehicles.

#### Loading

Trucks must back into proposed Parking Garage C (the easternmost multifamily building on Montrose Parkway) from proposed Public Street C and this is not acceptable. Therefore, at Site Plan, the Applicant must enter into a loading management plan governing the times of day trucks can enter the Site and associated operational safety requirements.

b. Local Area Transportation Review (LATR)

Based on the 2016-2020 Subdivision Staging Policy (SSP), the extension of the White Flint Metrorail Station Policy Area (MSPA) and modifications to the Local Area Transportation Review (LATR) standards only impact portions of the Subject Property. Parcels N208, N279, N174, and N231, are excluded from the LATR standards because they are included in the White Flint Special Taxing District. Since the portion of the Site west of Stonehenge Place falls beyond the White Flint Special Taxing District, the Applicant provided a Local Area LATR study to assess the impact of the proposed program for the units located west of Stonehenge Place (impacts for the project along the eastern portion of the Site are included as background traffic on the roadway network).

The study was initially submitted on October 19, 2018 and was revised on May 15, 2020. While the counts in the study are over a year old, the current COVID-19 traffic count guidelines allow the use of counts up to three years old due to reliability concerns for counts generated during the pandemic. The Applicant's trip generation for the 68 units west of Stonehenge Place demonstrates that the Applicant's program did not trigger the pedestrian, bicycle, or transit adequacy tests. The study suggests the intersection of East Jefferson Street and Montrose Parkway will operate above acceptable levels of delay. The Applicant proposes signal optimization to mitigate this intersection. The proposed mitigation is projected to reduce average intersection delay to 60.2 seconds.

The Applicant prepared a signal warrant analysis to assess whether a signal is necessary at the intersection of Montrose Parkway and Stonehenge Place per the *Manual of Uniform Traffic Control Devices* (MUTCD). The Applicant's analysis suggests that a signal is not warranted; however, the Applicant's assumptions for Montrose Parkway do not factor in prevailing speeds or include appropriate assumptions about the number of lanes of the minor approach (Stonehenge Place). Based on coordination with the Montgomery County Department of Transportation, the Applicant must install a signal at Montrose Parkway and Stonehenge Place.

Transportation Mitigation Agreements

The Site falls partially within the North Bethesda Transportation Demand Management (TDM) District and will be subject to two (2) Transportation Mitigation Agreements (TMAGs). White Flint properties within the Plan area



are required to support the mode share goals of the Sector Plan, which has a 50 percent Non-Auto Driver Mode Share (NADMS) goal. Stabilized projects are subject to enforcement surveys and—when necessary—mitigation based on various stages of development per the Master Plan. Staff will continue working with the Applicant during the review of the Site Plan to develop a TMAG program for the entire Site that supports the NADMS goals of the *White Flint* and *White Flint 2 Sector Plans*.

In accordance with County Code Section 42A-26, Transportation Demand Management Plans for New Development Projects (Project-based TDM Plans), the Wilgus project will be required to execute a Project-based TDM Plan. The Site is located within the following areas:

- North Bethesda TMD
- Red Subdivision Staging Policy (SSP) Area
- Orange SSP Area
- White Flint Sector Plan Area
- White Flint 2 Sector Plan Area

Project-Specific Requirement

One Project-based TDM Plan will be required that addresses the residential and mixed uses located east of Stonehenge Place (in the Red SSP area) and west of Stonehenge Place (in the Orange SSP area). The plan must include transportation demand management strategies that will enable the west side to contribute to achieving the TMD goal and the east side to achieving the commuting goals for the North Bethesda TMD and the White Flint area. Those goals include achieving a 42% NADMS for both employees and residents and apply under both the *White Flint* and *White Flint 2 Sector Plans*. Plan components include the following:

Level 2: Action Program (Wilgus West/Orange Area)

The Applicant must contribute to achieving the TMD goal by providing a contact person to work with MCDOT, facilitating outreach on-site, providing transportation-related information, and other basic Transportation Demand Management (TDM) actions as outlined in the Staff Report.

Level 3: Results Program (Wilgus East/Red Area)

The Applicant must achieve the TMD/Project goal. Actions must include all strategies outlined above; plus, additional strategies outlined in the Staff Report to ensure achievement of the 50/51 percent NADMS goal for the *White Flint Sector Plan* (50% for employees/51% for residents).

- c. Other Public Facilities and Services

The Subject Property is located within the W-1 and S-1 water and sewer categories. Therefore, there are adequate water and sewerage facilities to serve the Project. Additionally, the Project will be serviced by adequate police, fire, and health services.

Utilities

During the time of Sketch Plan, it was recommended that the Applicant add the undergrounding of existing utilities to public benefits to be provided by the Project, due to a specific recommendation of the Sector Plan. Per the Sector Plan, the priority public benefits for optional method development for the portions of the Site zoned CRT and CR includes "the provision of major public facilities other than school sites, including but not limited to: land for school athletic fields; new neighborhood parks and open spaces; public transportation (new Metro Station entrance); and undergrounding of utilities."

Accordingly, the Applicant must underground three (3) existing utility poles and associated overhead wires along the Subject Property's frontage on Towne Road, which will substantially improve life safety for the multi-family high-rise portion of the Project. Beyond addressing public benefit points, this major infrastructure improvement addresses the existing fire and rescue safety concerns that would persist if the poles and wires were to remain. By undergrounding the utilities, the Property will have an enhanced designated area on the ground for operational access, while also allowing aerial access to upper stories, and will substantially decrease emergency response time.

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.

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved by Staff on July 7, 2018 (NRI/FSD No. 420182300). The net tract area for the Preliminary Forest Conservation Plan is 14.96 acres, of which 11.30 acres is forested. The Site contains no streams or stream buffers, wetlands or wetland buffers, hydraulically adjacent steep slopes, 100-year floodplains, or known habitats of rare, threatened or endangered species. This Site drains to Cabin John Creek, which is a Maryland State Use Class I-P stream. This watershed is not in a Special Protection Area. The submitted Preliminary Plan is in conformance with the Montgomery County Planning Department's Environmental Guidelines.



## 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.

The Application includes a variance request in a letter dated April 20, 2020. The Applicant proposes to impact 110 trees that are 30 inches or greater DBH, and that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. These trees are all to be removed as part of the forest clearing. The list of variance trees to be removed is provided in the attachments to the Staff Report.

### Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its Property.

As previously stated in the Master Plan section above, virtually the entire Property is forested, so no development of any consequence can occur without clearing forest. No variance trees occur outside of forest on this Property. The eastern portion of the Site is within the comfortable walkshed to reach the White Flint Metro Station. The *White Flint 2 Sector Plan* recognizes the value of this Property to create dense development near Metro, enabling people to reduce or eliminate single-driver automobile trips. This results in significant environmental benefits, including reduced air pollution and reduced carbon emissions.

While recommending development of the Subject Property, the *White Flint 2 Sector Plan* approved by the County Council also included a requirement specific to Parcel N273 that, "During the development review process, pursue options for preserving all or a portion of the wooded area along Montrose Parkway for passive use."

In a letter from the Applicant dated April 21, 2020, in response to the Master Plan requirement, three options were considered: (1) To preserve all of the wooded area in this parcel; (2) to preserve a portion of the wooded area; and (3) to try to preserve individual trees within the required 20-foot landscaped buffer between the new development and the adjacent Cherington townhouse community. The justification detailed in

this letter broadly speaks to the hardship of preserving variance trees on the entire site.

In the April 21 letter, the Applicant states that "The first option Applicant considered is retaining the entire forested area south of the existing Cherington townhouses." The Applicant notes that the proposed development is consistent with the recommendations of the *White Flint 2 Sector Plan* and approved Sketch Plan No. 320190070. Parcel N273 comprises three acres, or 20% of the 14.96 Net Tract Area of the Site and lies just along the outer edge of the walkshed to the White Flint Metro Station. It is both a County and a Planning Department priority to locate development near transit. Retaining the entire forest on Parcel N273 would deny the Applicant the ability to build residential units on 20% of their Site near a Metro Station in conformance with County and Planning Department plans and policies. This constitutes denial of a reasonable and significant use of this Property.

The second option is to retain a portion of this forested area. This is complicated by both the form of the trees in this area, the shape of the Site, and the required road (Street B). Because the trees in this parcel have grown in a forest setting, their form is different from trees that are grown in the open. Notably, forest-grown trees have tall trunks with their leaf canopy at the top. In addition, their root systems are intertwined with the trees around them. Such trees are stabilized against storms and windthrow by growing as a forest unit. The interior trees are also protected from sun damage and changes to the forest microclimate. Preserving these trees therefore would require that they be saved as part of a large enough block of forest to continue to stand as a unit.

Retaining a forest unit of sufficient size and shape to function as forest is further complicated by both the shape of the Property, which is long and narrow, and the road that is required to serve the development with safe and adequate circulation. The required road narrows the forest area to the point that the remaining trees will become subject to storm damage, windthrow, and sun damage. Furthermore, because the Property drains from east to west, the trees at the western end of the Property will be impacted by required stormwater management treatment facilities. This also compromises the ability to preserve a functional block of forest at that end of the Site. The result is that any forest saved is likely to include impacted trees that could become a hazard to safety.

The third option is to attempt to save some individual specimen trees as a part of the 20-foot landscaped buffer between the new development and the Cherington townhouse community. While a few specimen trees



appear to be within that proposed 20-foot-wide buffer strip, the strip itself is not wide enough to contain enough of the trees' critical root zones to ensure survival of the trees. In addition, the forest-grown form of the trees, as indicated above, makes them subject to storm damage, sun damage, and windthrow. These trees would become a safety hazard. Furthermore, a more effective landscaped screen can be designed and planted if the larger trees, which will not serve the screening function as well, are preserved. Therefore, Staff concurs that saving individual specimen trees within the landscaped buffer is not feasible. Staff also explored with the Applicant the preservation of a few of the variance trees in the proposed Central Park but determined that the extent of critical root zone disturbance to construct the park would preclude saving these trees.

Because all of the variance-sized trees are within the forest that will be cleared, and because Staff has determined that it is infeasible to preserve all or some of the forest, on Parcel N273 as well as the remainder of the forested Site closer to Metro, and for the reasons stated above, Staff concludes that the inability to remove the variance trees would render the Site undevelopable. Therefore, the Planning Board concurs that the Applicant has a sufficient unwarranted hardship to justify granting the 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, 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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance of the trees is due to the fact that they are within forest that must be cleared to allow any development to occur on the site. The forest, including the variance trees, is not within regulatory buffers. Other applicants are permitted to clear forest outside of regulatory buffers to enable development. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

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

The variance trees are being removed due to normal circumstances that require forest clearing to allow for development, and not due to unique choices made by the Applicant that could be changed to save the trees. Therefore, the Planning Board concurs that the requested variance is not based on conditions or circumstances which are the result of actions by the Applicant but due to the design and infrastructure requirements of the Project.

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 requirements of development 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.*

The variance trees being removed are part of a forest being cleared under the auspices of the Forest Conservation Law. The law requires mitigation in the form of forest planting or preservation. The mitigation will provide water quality functions to replace the benefits of the trees lost. Therefore, the Planning Board has determined that removal of the variance trees will not violate State water quality standards or cause a measurable degradation in water quality.

Mitigation for the variance is at a rate that approximates the form and function of the Protected Trees removed. However, no mitigation is required for variance trees removed within a forest where mitigation is already being provided for forest removed under the Forest Conservation Law.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Division on June 30, 2020. The Application will meet stormwater management goals through a variety of techniques including micro-bioretenention areas, swales, planter boxes, and green roofs.



*6. All private roads meeting the requirements and findings for waivers under Chapter 50-4.3.E.4.*

The Application proposes Private Roads A and B. Per Section 50.4.3.4.c., in requesting private roads, the Applicant agrees, per the conditions of approval, that the proposed private roads must be built to the construction specifications of the corresponding, modified public road standards including paving detail and design data, and surface depth and structural design. The proposed private roads must be fully accessible to the public; accessible to fire and rescue vehicles, as needed; and designed to the modified public road standards.

For this subdivision, the proposed private internal streets meet the minimum standards necessary for approval. The private roads will be constructed to the minimum public road structural standards, will have a minimum 20 feet of pavement width and adequate turning radii where needed for emergency access, an appropriate paving cross-section elsewhere for private vehicles, and an appropriate circulation and turnaround pattern. The private roads will modify public road standard MC-2005.02. The private roads will be located within a separate private road parcel and will be shown on the Certified Preliminary and Site Plans and Record Plat, with the standard covenant that ensures they are adequately maintained and remain fully accessible to the public.

The private roads are intended to provide necessary flexibility in right-of-way width and road design, that cannot be achieved under Chapter 49, to provide enhanced sidewalk, curb and crosswalk design features that promote pedestrian circulation. Designed primarily for townhouse access and not to be used as a through street, Private Road B will be a 20-foot right-of-way with 23 feet of area for planter boxes, a 6-foot wide tree panel, a five-foot wide sidewalk on the southern side, and 5 foot-wide Public Utility Easements (PUEs) on both sides.

The Application proposes to provide a restricted right-out exit onto East Jefferson Street. The right-out curb cut will be located approximately 125 feet from the intersection of Montrose Parkway. The design of Street B is undesirable due to poor visibility at the four "corners" where the road bends southward. The Plan does not include dimensions, but it appears that the centerline curve radii are not compliant with the 100-foot curve radii requirement of Chapter 49 § 4.3.E.2.g. It is typically preferred that private roadways be designed to public street standards; however, the private connection allows for the provision of additional housing units. The roadway is traversable by fire and safety vehicles. As a condition of approval, the Applicant must provide speed calming measures at the two locations along Street B where the roadway bends sharply southward to reduce the potential for higher-speed, wide-angled turns, which could result in conflicts. Additional crossing treatment

needs at these two locations are discussed in the "Pedestrian Facilities" section of the Staff Report.

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 AUG 13 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 Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 23, 2020, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board