MCPB No. 20-113 Preliminary Plan No. 120190100 Montgomery County Humane Society Date of Hearing: October 15, 2020

NOV 04 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 4, 2019, Montgomery County Humane Society ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 7.79 acres of land in the R-60 Zone, located at the southwest corner of Georgia Avenue and Aspen Hill Road ("Subject Property"), in the 1994 Aspen Hill Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120190100, Montgomery County Humane Society ("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 October 5, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 15, 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. 120190010 to create 1 lot on the Subject Property, subject to the following conditions:¹

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

- 1. This Preliminary Plan is limited to one lot and 16,000 square feet of uses associated with the Montgomery County Humane Society for a campus, which will include a U-shaped complex incorporating and connecting the existing house and kennel with a community services building for a veterinary clinic and other animal services.
- 2. Any additional non-historic uses or programming that generates additional peak-hour trips should be within the scope of this approval or the uses or programming may require an amendment.
- 3. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.
- 4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 16, 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.
- 5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT'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 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 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 September 17, 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.

Forest Conservation/Environment

- 8. The Limits of Disturbance (LOD) on the Final Forest Conservation Plan must be consistent with the LOD on the Sediment and Erosion Control Plan.
- 9. No clearing, grading, or any demolition may occur prior to receiving approval of the Sediment and Erosion Control Plan.
- 10. Prior to the start of any clearing, grading, or demolition occurring on the Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for mitigation credit as shown on the Final Forest Conservation Plan submitted with the Certified Site Plan.
- 11. The Certificate of Compliance must be recorded in the Montgomery County Land Records prior to any clearing, grading, or demolition occurring on the Property.
- 12. Mitigation for the removal of 150 trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 330.5 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Subject Property, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees are permitted with the approval of the M-NCPPC forest conservation inspector. The trees must be planted within six months of forest conservation inspector approval of tree protection fencing.

Transportation

- 13. The Applicant must dedicate and show on the record plat:
 - a. Five (5) feet of Right-of-Way (ROW) on Aspen Hill Road.
 - b. Public Improvement Easement along Georgia Avenue for the shared-use path.
- 14. Construct a 12-foot wide sidepath along Georgia Avenue from Aspen Hill Road to Wendy Lane.
- 15. Prior to approval of additional uses such as a camp or substantial educational programming, update the traffic impact statement (TIS) in order to reflect the additional trips. Provide the relevant Local Area Transportation Review, if applicable per the findings of the TIS.

- 16. Provide a median extension on the southern leg of the Georgia Avenue and Aspen Hill Road intersection to protect pedestrians crossing Georgia Avenue, or provide an alternate form of refuge, subject to the review and approval of the State Highway Administration.
- 17. Remove the detectable warning strips in the median on the western leg of the Georgia Avenue and Aspen Hill Road intersection if the median is less than six feet wide, to be compliant with ADA best practices, subject to the review and approval of the State Highway Administration.
- 18. Provide hardscaping at the southwest corner of Georgia Avenue and Aspen Hill Road to ensure that the new proposed sidewalk and sidepath facilities can tie into the existing curb ramp with ample room for bicycle and pedestrian transitions, including the ability to turn around and dismount, subject to the review and approval of the State Highway Administration.
- 19. If the turnaround area, internal to the Property, is not intended to be flush, provide ramps as necessary for pedestrian accessibility purposes.

Record Plats

- 20. There shall be no clearing or grading of the site prior to the approval of the concurrently reviewed Certified Preliminary Plan and Final Forest Conservation Plan.
- 21. The record plat must show necessary easements.
- 22. The record plat must reflect all areas under common ownership.

Certified Preliminary Plan

- 23. The Applicant must show the following prior to certified preliminary plan.
 - a. Reduction of curb radii at the entrance to 15'.
 - Include the interim cross-sections for Aspen Hill Road and Georgia Avenue.
- 24. The Applicant must include the stormwater management concept approval letter, other applicable agency letters, and Preliminary Plan Resolution on the approval or cover sheet(s) of the certified Preliminary Plan.
- 25. 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.

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 was reviewed for compliance with the dimensional requirements for the R-60 Zone as specified in the Zoning Ordinance. The proposed lot dimensions, size, width, shape and orientation are appropriate for the location of the subdivision and this type of development and will meet all dimensional requirements for area, frontage, width, and setbacks in the zone. While the intent of the R-60 Zone is to provide for moderate density residential uses, the proposed uses have been historically associated with this Property. The Montgomery County Department of Permitting Services (MCDPS) has confirmed that the uses can be reestablished because the use is established with a historic site and the nonconforming use is consistent with the historic use of the Property, as documented in the Locational Atlas of Historic Sites and the Master Plan for Historic Preservation.

Pursuant to Section 59.4.4.8 of the current Zoning Ordinance, applicable development standards for a Standard Method development in the R-60 Zone are as follows:

R-60		Provided
Lot Area	6,000sf	Lot 1
		7.78 ac
Principal Building Placement		
Lot Width at Front Lot Line / Front Building Line	25' / 60'	≥ 60' / ≥ 60'
Front Setback (Minimum)		

Georgia Avenue – Existing building	25' 25'	46' ± 90'
Georgia Avenue – Animal care Aspen Hill Road – Community services	25'	± 95'
Side Setback (West property line)	Side: 8' min.	≥ 8'
Rear Setback (South property line)	20'	± 35'
Building Height		
Existing building	35'	32'
Community services	35'	16'
Animal care	35'	20'
Lot Coverage	35% (max)	~ 5.4%

The lot meets the requirements for the R-60 Zone with the continuation of a historic non-conforming use, as confirmed by MCDPS.

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

The 1994 Aspen Hill Master Plan (1994 Plan) chronicles the evolution of the Site from a veterinary office to a pet cemetery to a cemetery, educational and animal care facility. The 1994 Plan did not offer any specific recommendations for this site beyond recognizing the historical Aspin Hill Cemetery and a "covenant on the property specifies it be maintained and operated as a pet cemetery and be used as an educational and animal care facility." (1994 Plan, pg. 158)

The Applicant, whose mission is to end animal homelessness through education, outreach and adoption, proposes to build a compound which will provide adoption, pet education and a community services clinic at the site. Their development conforms with the Master Plan vision for the site. The Master Plan, the Aspen Hill Vision Zero Study (Study), and the Bicycle Master Plan (Bicycle Plan) stress the importance of improving the area for people walking and biking. The 1994 Plan lists among its transportation strategies improving sidewalks, access to transit routes, and bikeways (pg. 87) and recognizes the ability of redevelopment to improve pedestrian aspects of the State highway corridors and Aspen Hill's crossroads (pg. 81). The proposed widening of the sidewalk and landscape buffer along Aspen Hill and the new sidepath along Georgia Avenue

contribute to the goals of improving pedestrian and bicycle connections. The new sidepath facility will improve connections from Aspen Hill Road and nearby shopping centers to an existing transit stop on Georgia Avenue and Wendy Lane.

The Study recommends restriping the crosswalks at Georgia Avenue and Aspen Hill Road as high visibility crosswalks (Study, pg. 27) as well as adding a median or other refuge facility (Study, pg. 32). The Applicant proposes to restripe the crosswalks connecting to the site in support of the Study recommendations. Condition number 16 requires the Applicant to provide a median extension or alternate refuge facility along the crosswalk at the southern leg of the Georgia Avenue and Aspen Hill Road intersection, to support the Study recommendation for median refuge.

Master Planned Roadways and Bikeways

Georgia Avenue: The site is adjacent to Georgia Avenue (MD-97), which is classified as a major highway by the Master Plan of Highways and Transitways. The existing section of Georgia Avenue varies in width and includes six (6) lanes divided by a central median. The section adjacent to the site is 150' and greater; therefore, no additional right of way is required. The 2018 Bicycle Master Plan recommends a sidepath breezeway facility adjacent to the site. Generally, breezeway facilities are anticipated to facilitate bicycle traffic at higher speeds as well as provide greater paving depths to reduce short-term maintenance needs. The typical breezeway sidepath section is 16', which includes five (5) feet of space for pedestrian mobility, and eleven feet dedicated to bidirectional bicycle mobility. The Applicant is not required to dedicate space based on the Master Plan of Highways and Transitways, but the planned bicycle facility cannot be accommodated in the existing right-of-way at sixteen feet assuming that at least six (6) feet of space are necessary to buffer the proposed bicycle facility from the right-of-way. Furthermore, the location of existing utility poles on Georgia Avenue require the Applicant to further push the sidepath into the site to avoid obstructions. This would require the Applicant to provide a retaining wall, which would impact the frontage and require the Applicant to take on maintenance responsibilities for the wall. As such, Staff coordinated with the Applicant and has agreed to accept a 12-foot breezeway. The separation between the facility and the roadway varies but is generally nine feet or greater due to the location of the existing utility poles.

Aspen Hill Road: Aspen Hill Road extends along the northern site frontage. The Master Plan of Highways and Transitways classifies this roadway as a 90-foot arterial (A-38). The Applicant has agreed to dedicate an additional five (5) feet of right of way consistent with the master-planned width. The Bicycle Master Plan recommends bidirectional separated bicycle lanes on the northern side of Aspen

Hill Road (opposite the site's frontage). Thus, this application substantially conforms with the vision set forth in the Master Plan.

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

Transportation

On-Site Vehicular Circulation

The Applicant proposes to relocate its existing driveway on Aspen Hill Road slightly to the east. Initially, the Applicant proposed to position the driveway opposite to one (1) of the two (2) gas station curb cuts across Aspen Hill Road; however, the proposed location had the potential to create conflicts in a substandard-width center turn lane, which has not tapered out to a full ten feet opposite to the gas station. As such, the Applicant and Staff collaborated to increase the distance between the respective curb cuts on either side of the roadway, as well as the adjacent lot's curb cut.

The proposed driveway curb cut is 25 feet wide at the drive aisle and 67 feet at the apron, suggesting the apron radii is excessive. Prior to certified Preliminary Plan, the Applicant will reduce the driveway width to be no greater than 22' wide and provide 15-foot curb radii at the driveway, subject to formal approval by the Department of Permitting Services' Fire Department and Access and Water Supply Division, which will need to review a revised plan prior to acceptance.

Pedestrian and Bicycle Facilities

The Applicant is improving the sidewalk along Aspen Hill Road to be five (5) feet wide with a six (6) foot landscape buffer. The 12-foot sidepath facility proposed along Georgia Avenue will facilitate pedestrian mobility with ample buffering along the Applicant's site frontage. The Applicant has agreed to extend the proposed sidepath past its frontage down to a logical termination point at Wendy Lane. The Applicant is widening the curb ramps along the breezeway sidepath and widening the existing median break on the western leg of Georgia Avenue and Aspen Hill Road to the width of the sidepath.

Because the median is less than six (6) feet wide, the existing detectable warning strips will be removed per Americans with Disabilities Act (ADA) best practices. This is because the strips indicate to an individual with visibility impairments that she or he has reached a safe location or refuge; however, the location does not provide adequate space to be considered a safe refuge.

The Applicant is also restriping crosswalks connecting to the site as highvisibility continental crosswalks. The Applicant will provide a median extension or alternate refuge facility along the crosswalk at the southern leg of the Georgia

Avenue and Aspen Hill Road intersection. The Applicant is also providing a hardscape at the southwestern corner of Aspen Hill Road and Georgia Avenue to allow for room for pedestrians and bicyclists to transition, turn, and dismount.

Internally, the site has a combination of sidewalks and informal paths connecting parking areas to facilities.

Trip Generation

The approved use is anticipated to generate 22 morning and 21 evening peak-hour person trips. As such, no Local Area Transportation Review (LATR) was required. The Applicant provided additional justification in its Traffic Impact Statement (TIS) clarifying the adoption component's projected generated trips. The Applicant has indicated that it may wish to pursue additional uses in the future, such as day camps or planned education programs during the summer. The TIS provided does not account for any of these additional uses. As such, condition 19 requires the Applicant to update its TIS and provide an LATR, if necessary, prior to the operation of these additional uses.

Bicycle Parking

County Code does not require the provision of bicycle parking at animal care facilities. The Applicant is providing six short-term bicycle racks, which can accommodate twelve bicycles, external to the site.

Transit Service

The site is within a ten-minute walk of bus stops on the Washington Metropolitan Area Transit Authority's (WMATA) Metrobus Y2, Y7, and Y8 lines, as well as the Ride On 26 Line. The Ride On 26 Line provides transit service between the WMATA Glenmont Metrorail Station and the Montgomery Mall Transit Center via points in Aspen Hill and Twinbrook with approximately 20-minute peak hour headways (per scheduling changes effective August 2, 2020). The Metrobus Y series provides service between the WMATA Silver Spring Metrorail Station and points north on Georgia Avenue, including the Intercounty Connector Park and Ride Route (Y7) and the Medstar Montgomery Medical Center (Y2, Y8). Each line provides approximately 20-minute peak hour headways. Because service is interspersed across the lines, Metrobus headways are effectively ten minutes.

Other Public Facilities

The proposed development will be served by public water and sewer systems. The Montgomery County Department of Permitting Services Fire Department Access and Water Supply Section has reviewed the application and has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses and health care are currently operating in accordance with the Subdivision Staging

Policy and will continue to be sufficient following construction of the project. Electric, gas and telecommunications services are available and adequate.

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 Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Final Forest Conservation Plan

The Applicant has submitted a Final Forest Conservation Plan with the Preliminary Plan and will meet the forest conservation requirements of 1.25 acres in an off-site mitigation bank.

B. Forest Conservation Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. 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 a national, State, or County champion tree; 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 May 24, 2020 to remove 150 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law. As the entire Property has been designated as the historic setting for this site, all impacts and removals of any tree requires an approved variance.

Unwarranted Hardship

As the majority of the property is taken up with interments, the area for development is limited with no alternative location. Because of this, the proposed development is primarily in the area of the existing buildings and parking lot. In order to develop the property in a manner that will meet the needs of the Humane Society while preserving the historic

buildings and the cemetery, as well as avoiding burial sites, the tree removals and impacts are necessary.

The Property has been neglected with the buildings falling into disrepair and the vegetation has become overgrown. Many trees are not in good condition and have grown up in areas that were previously maintained as lawn and a large number have grown up between fences along the property line. Some of these trees have grown up next to the existing historic buildings and must be removed to protect the buildings and maintain the historic character of the buildings. Thus, the Applicant has a sufficient unwarranted hardship to consider a variance request.

The Planning 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.

The Applicant has minimized disturbance to the site and the tree removals are necessary to construct a safe entrance, restore the historic buildings and grounds, and construct the new buildings associated with the MCHS headquarters. The Property is constrained by the historic nature of the existing buildings, as well as the location of human and animal remains. 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 variance is based on the locations of the trees, rather than on conditions or circumstances which are the result of actions by the Applicant. The Applicant will be removing damaged trees so that the Property can be properly restored and maintained. The Applicant has minimized disturbance to the Property in order to construct a headquarters for the MCHS and continue the existing pet cemetery use.

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 proposed site design and constraints on the Subject Property need to construct a headquarters

for the Applicant and restore the historic buildings and site and not as 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 Applicant will mitigate for the 150 trees proposed for removal as part of this development. Mitigation must be provided for removal of these trees by planting 83 native shade trees of at least four inches caliper, each, within the new development. This is based on Planning Department policy that requires replacement of variance trees at a rate of 1" replaced for every 4" removed, using replacement trees of no less than 3" caliper, to replace lost environmental functions performed by the trees removed. These mitigation plantings will provide sufficient tree canopy in a few years to replace the lost water quality benefits of the variance tree being removed. Therefore, 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 their stormwater management concept from the Montgomery County Department of Permitting Services, Water Resources Section on July 9, 2020. The concept meets required stormwater management goals using ESD approaches including microbioretention 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 burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M

While the Subject Property is primarily an animal cemetery, there are 57 human burial sites interspersed with the animal interments. The Applicant has worked extensively to locate and identify all human remains on the site and has developed a maintenance plan to ensure that burial sites are protected.

a. The Applicant must use the Montgomery County Planning Board Guidelines for Burial Sites to establish the location of the burial site. Unless Planning Department Staff believes that vandalism concerns dictate otherwise, the corners of the burial site must be staked in the field before preliminary plan submittal. If required, the stakes must be maintained by the applicant until Preliminary Plan approval.

The Applicant completed archaeological and historical investigations as required by the Montgomery County Burial Sites Guidelines to locate human burials within the parcel in August 2019. The human burials have been marked and mapped as required by Ordinance 18-31, and the single lot proposed will promote the long-term maintenance of the burial site and protection of existing elements. The results of that investigation show that burials are confined to the fenced area of the site, and don't extend into the area where there are buildings. Proposed developments will not impact human burials.

b. An inventory, that may include photographs, of existing burial site elements (such as walls, fences, gates, landscape features, fieldstones, grave locations, and tombstones) and their condition must be submitted as part of the Preliminary Plan application.

The Preliminary Plan drawings show the location of all human burial sites. These burial sites are interspersed with the interments of pets.

c. The placement of lot lines must promote long-term maintenance of the burial site and protection of existing elements.

Based on the results of the field investigations summarized in the Management Summary, all existing elements associated with the burial site are contained within the existing cemetery fence. No subdivision of the land is proposed, and a Maintenance Plan has been submitted.

d. The burial site must be protected by arrangements sufficient to assure the Planning Board of its future maintenance and preservation, as specified in the Montgomery County Planning Board's guidelines for burial sites.

The Applicant has submitted a Maintenance Plan to ensure that human grave sites will be protected and maintained during construction and future use. The Maintenance Plan includes plans for the care of the grounds, landscaping, trash removal, fencing, and gravestones, monuments, and statuary.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision are satisfied.

Not applicable.

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

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson and Verma voting in favor of the motion at its regular meeting held on Thursday, October 15, 2020, in Wheaton, Maryland.

Casey Anderson, Chairman Montgomery County Planning Board