

# Montgomery Planning

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB

Item No.

Date: 11.19.20

## Right-of-Way Abandonment, AB-773, Portions of Westbard Avenue and Ridgefield Road



Katie Mencarini, Planner Coordinator, Downcounty Planning, [Katherine.Mencarini@montgomeryplanning.org](mailto:Katherine.Mencarini@montgomeryplanning.org), 301.495.4549



Stephanie Dickel, Supervisor, Downcounty Planning, [Stephanie.Dickel@montgomeryplanning.org](mailto:Stephanie.Dickel@montgomeryplanning.org), 301.495.4527

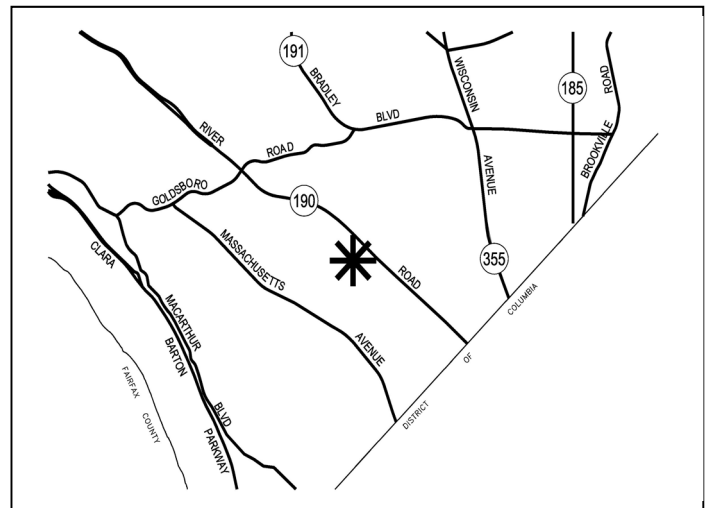


Elza Hisel-McCoy, Chief, Downcounty Planning, [Elza.Hisel-McCoy@montgomeryplanning.org](mailto:Elza.Hisel-McCoy@montgomeryplanning.org), 301.495.2115

### Description

Completed: 11.9.20

- Request to abandon 5,891 feet of Westbard Avenue right-of-way and 9,123 square feet of Ridgefield Road right-of-way
- Zoned CR 1.5, C-0.5, R-1.5, H-75', CR 1.0, C-0.25, R-1.0, H-45', and R-60
- Located between River Road and Westbard Circle
- Petitioners: Equity One (Northeast Portfolio), LLC
- 2016 *Westbard Sector Plan*
- Review Authority: Chapter 49, Streets and Roads



### Summary

- Staff recommends approval of the abandonment petition.
- The 2016 *Westbard Sector Plan* calls for the realignment of Westbard Avenue between Westbard Circle and River Road in order to tie Westbard Avenue directly into River Road with a right-angle intersection.
- On March 14, 2019, the Planning Board approved Preliminary Plan No. 120170170 (MCPB No. 19-032) which included a condition of approval requiring filing of the rights-of-way abandonment prior to obtaining use and occupancy permits (Condition 18).
- As part of the Preliminary Plan No. 120170170 approval, Equity One (Northeast Portfolio), LLC is required to construct and dedicate to public use the realigned Westbard Avenue (Condition 20).
- Transmit comments to the Montgomery County Department of Transportation recommending approval of the request to abandon the subject rights-of-way (Westbard Avenue and Ridgefield Road) because the petition is sought in connection with the realignment of Westbard Avenue, which will make the areas petitioned for abandonment no longer necessary for public use.

## REQUEST FOR COMMENTS BY THE MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

On October 9, 2020, the Maryland - National Capital Park and Planning Commission (M-NCPPC) received Abandonment Petition AB773 (Attachment A), in accordance with Section 49-62(g) of the County Code. The subject Petition requests abandonment of portions of the Westbard Avenue and Ridgefield Road (Figure 1) rights-of-way. Collectively referred to in this Report as the “Subject Abandonment,” the Petition seeks abandonment of approximately 5,891 square foot portion of Westbard Avenue and an approximately 9,123 square foot portion of Ridgefield Road in Bethesda. The Subject Abandonment is required in order to achieve the master-planned realignment of Westbard Avenue at River Road. The distinction between the right-of-way to be abandoned and the new right-of-way to be dedicated as part of the realignment project are shown in Figure 2.



*Figure 1: Vicinity Map*

Equity One (Northeast Portfolio), LLC are referred to in this document at the “Petitioners”. The Petitioners own and are pursuing redevelopment of the Westwood Shopping Center/Kensington of Bethesda referenced in Preliminary Plan 120170170 (“Property or Subject Property”), a mixed-use development with 647,378 square feet of residential uses and up to 205,537 square feet of non-residential uses. The Property includes the entirety of the land surrounding the Subject Right-of-way Abandonment (Figure 2). The surrounding properties are zoned CR 1.5, C-0.5, R-1.5, H-75’, CR 1.0, C-0.25, R-1.0, H-45’, and R-60.

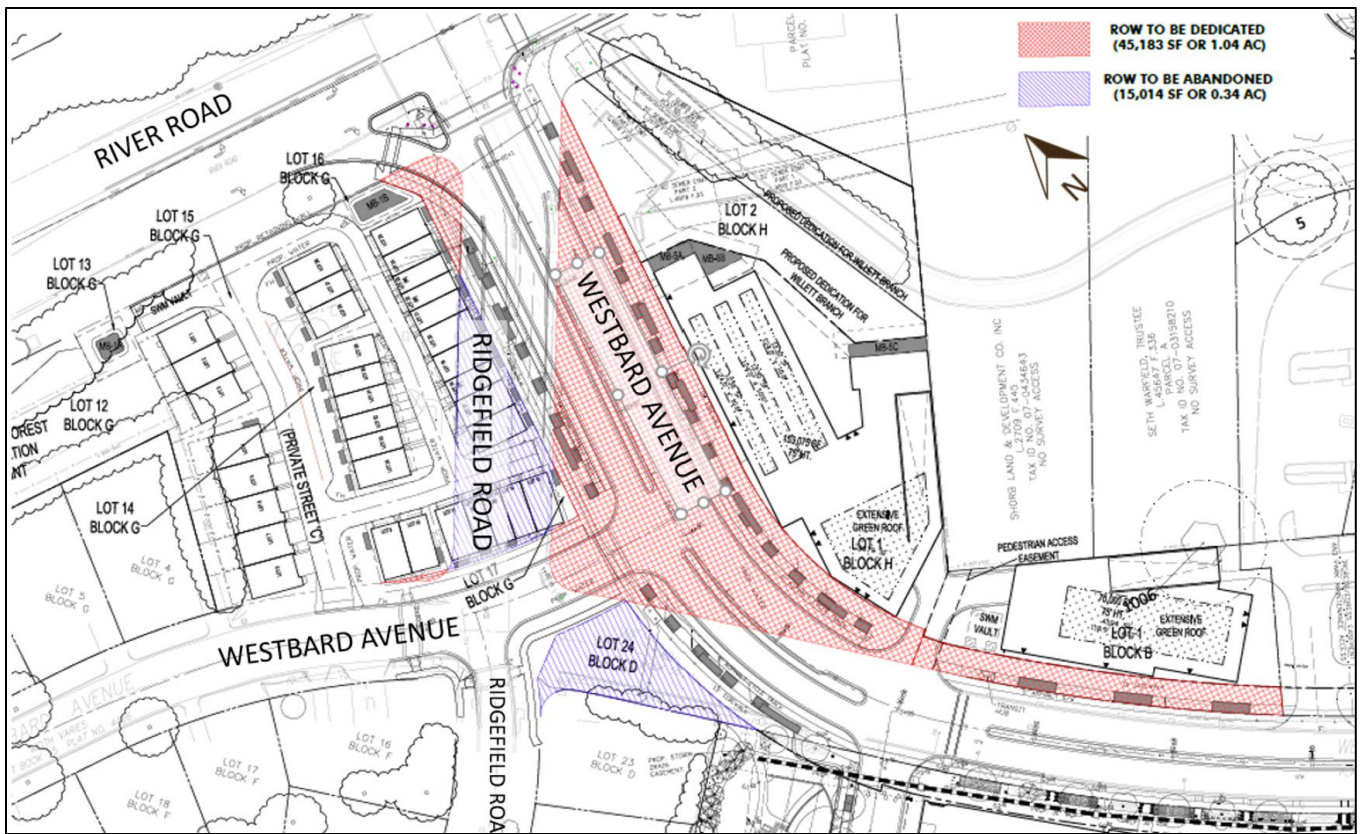


Figure 2: Subject Right-of-Way, Showing Areas Requested for Abandonment and Areas to be Dedicated for Westbard Avenue Realignment

A virtual public hearing has been scheduled for Monday, December 15, 2020 at 12:30 PM in accordance with Section 49-62(f) of the County Code. This Staff Report summarizes comments from the M-NCPPC and seeks permission from the Planning Board to transmit comments to MCDOT for consideration by the County Council.

## SITE DESCRIPTION AND BACKGROUND

Ridgefield Road between River Road and Westbard Avenue is an improved Business District roadway with two lanes in each direction and a master-planned right-of-way of 100 feet. West of Westbard Avenue the road changes character to a residential street and narrows down to one lane in each direction.

Westbard Avenue between Ridgefield Road and Westbard Circle is an improved Business District roadway with two lanes in each direction and a master-planned right-of-way of 110 feet. Westbard Avenue is the major north-south connection for residents and businesses within the Westbard area, linking River Road (MD-190) and Massachusetts Avenue (MD-396).





*Figure 3: Ridgefield Road Looking West towards Westbard Avenue*

#### 2016 Westbard Sector Plan

The 2016 *Westbard Sector Plan* recommends the realignment of Westbard Avenue between Westbard Circle and River Road for the purpose of tying Westbard Avenue directly into River Road with a right-angle intersection (pages 34-35). As explained in the Sector Plan, the realignment will help facilitate direct flow of traffic between the Westwood Shopping Center site and River Road as well as regional traffic between River Road and Massachusetts Avenue. The intersection improvements at River Road include a new channelized right-turn lane. This is necessary to address intersection geometry issues and accommodate large delivery trucks to the large retail establishments on Westbard Avenue.

The Sector Plan endorses permanent closure of the residential portion of Westbard Avenue between River Road and Ridgefield Road end. The closure should not occur until the existing Westbard Road/River Road intersection is realigned to intersect River Road with a right-angled turn.





Figure 4: Approved Preliminary Plan 120170170

#### Relevant Regulatory Approvals

On March 14, 2019 the Montgomery County Planning Board approved the Westwood Shopping Center Preliminary Plan 120170170 which allowed for the creation of up to 111 lots for up to 852,915 total square feet of development. The Preliminary Plan (MCPB No. 19-032, Attachment B) was conditioned to receive approval of the Subject Abandonment (AB773) prior to use and occupancy certificates for the commercial building (condition 18). The Applicant was also required to secure a resolution abandoning all portions of the existing Westbard Avenue/Ridgefield Road rights-of-way that are no longer needed for transportation purposes prior to constructing the realigned Westbard Avenue and associated intersections improvements, and prior to the issuance of use and occupancy certificates for the 55<sup>th</sup> townhouse unit for Site Plan 820180190 (condition 20).

Preliminary Plan 12017017A is currently under review and seeks to modify a previous approved site access point. These modifications if approved would have no effect on the Subject Abandonment and would uphold conditions 18 and 20 of the previously approved preliminary plan.

#### Right of Way Abandonment Petition

This Petition seeks to abandon approximately 5,891 square feet of Westbard Avenue and 9,123 square feet of Ridgefield Road in Bethesda. The petition is sought in connection with the realignment of Westbard Avenue, after which the areas sought to be abandoned will no longer be necessary for public use.

As previously stated, the Petitioner is required as part of Preliminary Plan 120170170 to obtain a council resolution for the Subject Abandonment to construct the master-planned realignment of Westbard Avenue. Construction of the realignment of Westbard Avenue and the associated intersection improvements are also required to pursue permits and certificates needed to realize the projects approved as part of Preliminary Plan 120170170. The Petitioner is currently pursuing permits for the first phases of its redevelopment. Approval of the abandonment is necessary now for the Petitioners to complete the realignment of Westbard Avenue within the timeframes set by the Preliminary Plan. Furthermore, the Petitioner will soon be dedicating by plat, approximately 45,183 square feet of area for the new Westbard Avenue right-of-way.



## ANALYSIS AND FINDINGS

### Conformance to the Master Plan

The 2016 *Westbard Sector Plan* specifically calls for the abandonment of the portions of rights-of-way on Westbard Avenue and Ridgefield Road (page 34-37).

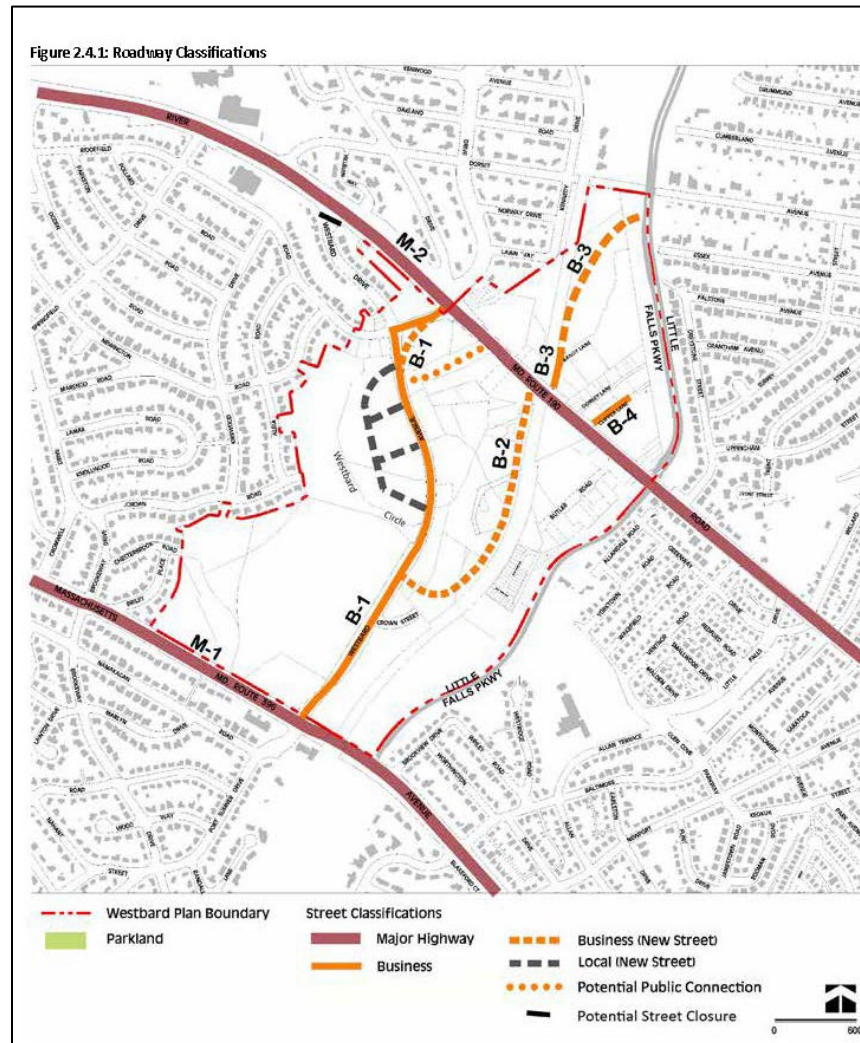


Figure 5: Transportation Network Plan from the 2016 *Westbard Sector Plan* (page 35)

The Sector Plan states, “Westbard Avenue, a business district street, heading toward River Road should be reconfigured to tie directly to River Road with a right-angle intersection, instead of teeing into Ridgefield Road. The reconfiguration would create Westbard Avenue extended that would connect directly with River Road. Ridgefield Road would be reconfigured to tee into reconfigured Westbard Avenue extended. The block of Westbard Avenue south of River Road would tee into Ridgefield Avenue.”

The Petitioner is working closely with MCDOT on the realignment of Westbard Avenue and the redesign of the intersections with River Road and Ridgefield Road. In coordination with MCDOT, the Petitioner has determined the areas needed for abandonment to realize the master-planned vision for Westbard Avenue and Ridgefield Road.

The 2018 *Bicycle Master Plan* prioritized improving the level of traffic stress on two major highways (River Road and Massachusetts Avenue) and the business district road connecting the two (Westbard Avenue). Separated bikeways are envisioned along the entire length of Westbard Avenue, and a significant segment will be realized when the Petitioner reconstructs Westbard Avenue between River Road and Westbard Circle. The reconfiguration of the intersection at Westbard Avenue extended and River Road will improve sightlines and reduce exposure of pedestrians and bicyclists to conflicts with cars when the roadway geometry changes result in a right-angle intersection.

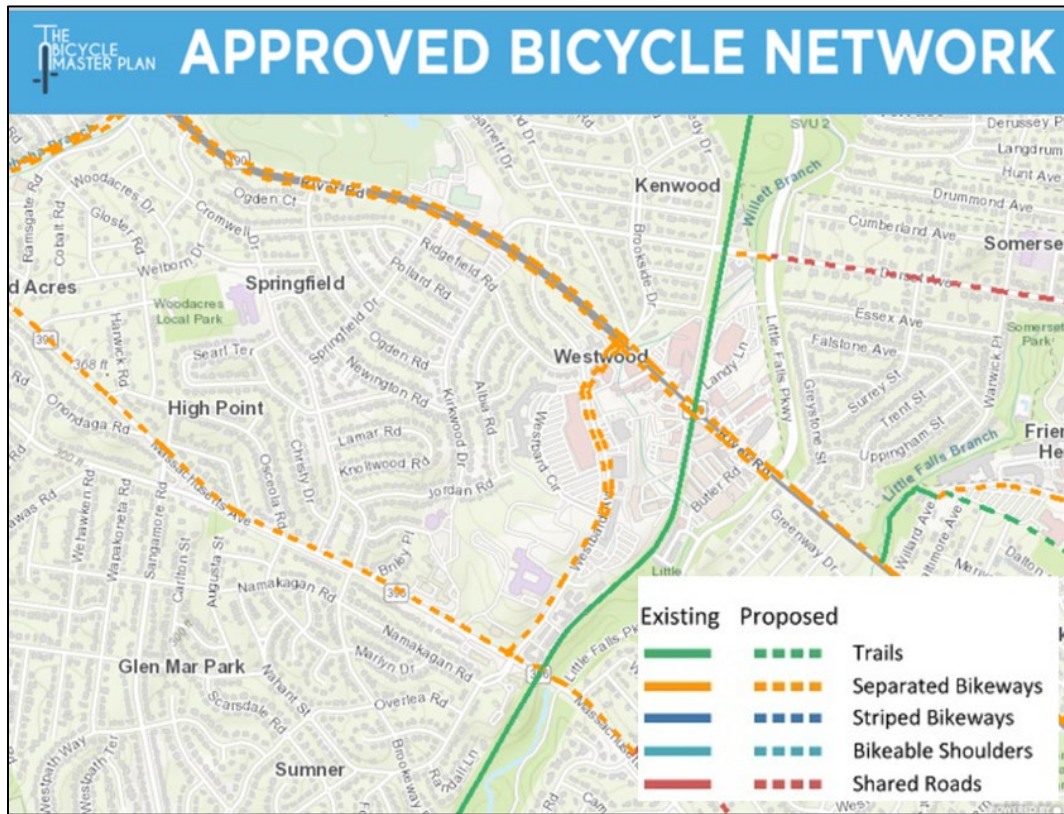


Figure 6: Bicycle Master Plan Recommendations for Westbard Sector Plan Area

#### Chapter 49 Findings

Section 49-63(c)(1) -(2) of the Montgomery County Code (the "Code") authorizes the County Council to abandon a right-of-way, including a public road, upon a finding that:

1. The right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future, or
2. The abandonment or closing is necessary to protect the health, safety and welfare of the residents near the right-of-way to be abandoned or closed.

Furthermore, Section 49-62(a) of the Code defines right-of-way, as the following:

*any road, street, alley, crosswalk, pedestrian walkway, shared use path, water main, sanitary sewer, storm sewer, or storm drainage right-of-way used at any time by the public, including use by pedestrians and bicyclists.*

As envisioned by the 2016 *Westbard Sector Plan*, Westbard Avenue is to be realigned to intersect directly with River Road, replacing River Road's existing intersection with Ridgefield Road. When the realignment is achieved,



the Subject Right-of-way will no longer function as a roadway or other path of travel, nor is it needed for utilities. Therefore, the Subject Right-of-way will no longer be needed for public use. It is important to note that the Subject Right-of-way is not the sole access to any property along Westbard Avenue or Ridgefield Road.

The abandonment of the Subject Right-of-way is also required by Condition of Approval 18 for Primary Plan 120170170, which requires that, prior to the issuance of the Use and Occupancy Certificate for the 55th townhouse unit for the associated site plan, [the Petitioner] must secure a County Council Resolution abandoning the portions of existing Westbard Avenue/Ridgefield Roads rights-of-way that are no longer needed for transportation purposes. In other words, when this realignment occurs, sections of Ridgefield Road and Westbard Avenue previously used for right-of-way will no longer be needed for public use. Therefore, all criteria are met to make a finding in favor of the requested abandonment.

#### **CITIZEN CORRESPONDENCE AND ISSUES**

The Petitioner has complied with all submittal and noticing requirements. As of the date of this Report's posting no citizen correspondence been received.

#### **CONCLUSION**

Staff recommends the Planning Board support the Petition and transmit comments to the Montgomery County Department of Transportation.

#### **Attachments**

Attachment A – Petition for Abandonment 773 and all included attachments  
Attachment B – Planning Board Resolution for Preliminary Plan 120170170



Erin E. Girard  
 301-517-4804  
 egirard@milesstockbridge.com

May 22, 2020

Christopher Conklin  
 Director, Montgomery County Department of Transportation  
 101 Monroe Street, 10<sup>th</sup> Floor  
 Rockville, Maryland 20850

Re: Abandonment of Portions of Westbard Avenue and Ridgefield Road in Bethesda

Dear County Executive Elrich:

On behalf of our client, Equity One (Northeast Portfolio), LLC ("Equity One"), the purpose of this letter is to formally request the abandonment of an approximately 5,891 square foot portion of Westbard Avenue and an approximately 9,123 square foot portion of Ridgefield Road in Bethesda. The abandonment is sought in connection with the realignment of Westbard Avenue by Equity One, which realignment will make the areas sought to be abandoned no longer necessary for public use. A sketch depicting the realignment and areas to be abandoned is shown on the plan attached hereto as Exhibit "A", and a metes and bounds description and sketch of the areas to be abandoned are attached as Exhibit "B".

The Westbard Sector Plan, approved and adopted in July 2016 ("Sector Plan"), calls for the realignment of Westbard Avenue between Westbard Circle and River Road in order to tie Westbard Avenue directly into River Road with a right-angle intersection. *See* Sector Plan, p. 34-35, 37 (relevant excerpts of the Sector Plan attached hereto as Exhibit "C"). Subsequent to the adoption of the Sector Plan, Equity One sought and obtained approval of Preliminary Plan No. 120170170 ("Preliminary Plan") for its properties lying along Westbard Avenue within the Sector Plan area. A copy of the Preliminary Plan Resolution of Approval is attached hereto as Exhibit "D". As part of the Preliminary Plan approval, Equity One is required to "construct and dedicate to public use the realigned Westbard Avenue." *See* Preliminary Plan Condition No. 20. Recognizing that the realignment will create excess right-of-way necessary for other contemplated redevelopment, the Preliminary Plan also requires that, "[p]rior to Use and Occupancy Certificate for the Commercial Building, the Applicant must file for abandonment of portions of Ridgefield Road and Westbard Avenue." *See* Preliminary Plan Condition No. 18. Condition 20.b of the Preliminary Plan further requires that, prior to the issuance of the Use and Occupancy Certificate for the 55<sup>th</sup> townhouse unit for the associated site plan, Equity One must

103032\000001\4849-8685-7910.v1

11 N. WASHINGTON STREET, SUITE 700 | ROCKVILLE, MD 20850-4276 | 301.762.1600 | milesstockbridge.com

BALTIMORE, MD • EASTON, MD • FREDERICK, MD • RICHMOND, VA • TYSONS CORNER, VA • WASHINGTON, D.C.



Page 2

“[s]ecure a County Council resolution abandoning the portions of existing Westbard Avenue/Ridgefield Roads rights-of-way that are no longer needed for transportation purposes.”

Equity One is currently pursuing permits for the first phases of its redevelopment, including the realignment of Westbard Avenue and the first commercial building referenced in Preliminary Plan Condition No. 20. To ensure development can occur at a timely pace without interruption, Equity One is seeking the abandonment now to ensure its approval is complete within the timeframes set forth in the Preliminary Plan. Importantly, in connection with the road realignment, Regency will soon be dedicating by plat approximately 45,183 square feet of area for the new Westbard Avenue right-of-way.

Pursuant to Section 49-63(c) of the Montgomery County Code (“Code”), a right-of-way may be abandoned if the County Council finds that, “(1) the right-of-way is no longer necessary for present public use or anticipated public use in the foreseeable future,” or “(2) the abandonment...is necessary to protect the health, safety, and welfare of the residents near the right-of-way to be abandoned.” Although only one criterion need be met for approval of an abandonment, both are met in this case. As noted above, in accordance with the recommendations of the Sector Plan, Westbard Avenue will be realigned so as to intersect directly with River Road, replacing River Road’s existing intersection with Ridgefield Road. When this realignment occurs, sections of Ridgefield Road and Westbard Avenue previously used for right-of-way improvements will no longer be needed for public use, either at that point in time or in the future.

With regard to the protection of health, safety and welfare of residents near the right-of-way, Section 49-63(c)(2) of the Code further provides, “[i]n assessing health, safety, and welfare issues, the Council may consider: (A) any adopted land use plan applicable to the neighborhood; (B) safe and efficient pedestrian and vehicular traffic patterns and flow, together with alternatives, in the immediate neighborhood, for local and through traffic; and (C) changes in facts and circumstances since the original dedication of the right-of-way.” As noted above, the Sector Plan specifically calls for the realignment of Westbard Avenue. The purpose of the realignment is to enhance circulation through the Westbard area and make it more safe and efficient for neighborhood traffic and those accessing the redeveloped areas within the Sector Plan. *See* Sector Plan, p. 10 (“Realign Westbard Avenue and Ridgefield Road to create a clear gateway into the retail area and protect single-family neighborhoods.”) The recommendation calling for this realignment, adopted in 2016, also occurred after the original dedications were made in the 1950s, representing changes circumstances. Therefore, all of the sub-criteria are met for a finding that the abandonment would also protect the health, safety and welfare of the residents of the area.

Based on the foregoing, we respectfully request that the portions of Ridgefield Road and Westbard Avenue detailed and shown on Exhibit “B” be abandoned. As shown on the Proposed Lot Plan included as part of the Certified Preliminary Plan, a copy of which is attached hereto as Exhibit “E”, the abandoned portions of Ridgefield Road are proposed to be incorporated into Lot

Page 3

15, Block G, and the abandoned portions of Westbard Avenue to be replatted as Lot 24, Block D<sup>1</sup>.

In connection with this abandonment request, enclosed please find the following:

- \$2500.00 filing fee
- Plan depicting the realignment and areas to be abandoned (Exhibit "A")
- Metes and bounds descriptions and sketch of the areas to be abandoned (Exhibit "B")
- Relevant excerpts of the Sector Plan (Exhibit "C")
- Preliminary Plan Resolution (Exhibit "D")
- Proposed Lot Plan (Exhibit "E")
- Aerial photograph of existing conditions
- Tax map highlighting area to be abandoned
- Plan depicting the road realignment
- List of adjoining properties

Thank you for your consideration of this request. If you have any questions or would like any additional information, please feel free to contact me.

Sincerely,

**Miles & Stockbridge, P.C.**



Erin E. Girard

cc: Eric Willis, Esq.  
Sam Stiebel  
Kevin Johnson

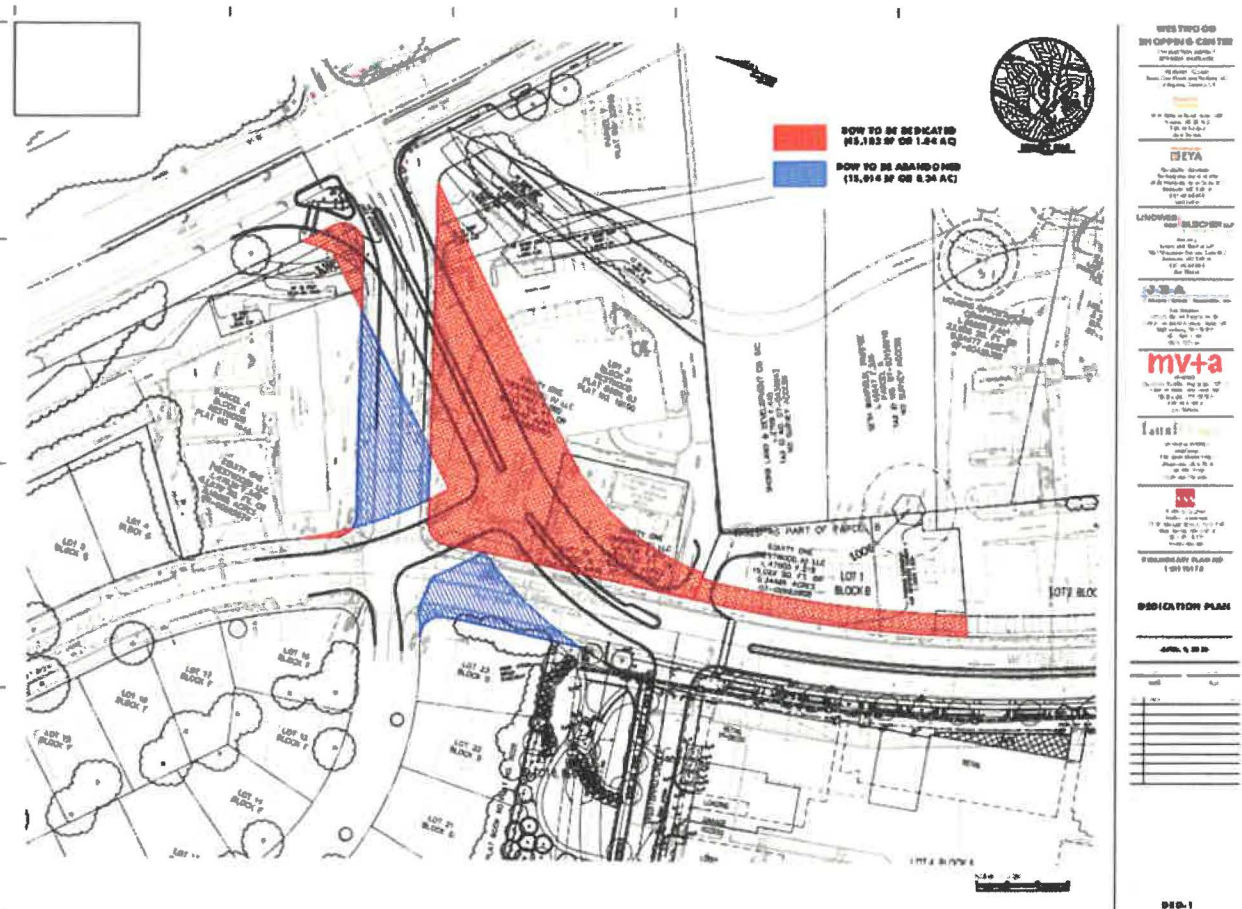
---

<sup>1</sup> As shown on Plat No. 4456, the relevant portions of Westbard Avenue were dedicated by Equity One's predecessor in title, entitling it to the land after abandonment. Equity One also owns the land on both sides of the relevant portion of Ridgefield Road, originally dedicated by Plat No. 5026, and has chosen to incorporate the whole of that abandoned area into Lot 24, Block D.

103032\000001\4849-8685-7910.v1



**EXHIBIT "A"**





**EXHIBIT B  
EXISTING RIGHT-OF-WAY ABANDONMENT  
7<sup>TH</sup> ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND**

**Part 1**

Being a strip of land crossing and being part Westbard Avenue as shown on a plat of subdivision of "Westwood Shopping Center" recorded among the Land Records of Montgomery County, Maryland, as Plat 4456, and being more particularly described as follows:

Beginning for the same at a point on the west line of Westbard Avenue, said point being South 07° 07' 30" East, 27.31 feet from the Northeast corner of Parcel A-4 as shown on a plat of subdivision "Westwood" recorded among the aforementioned Land Record, as Plat 5498; thence with said Westbard Avenue

1. North 7° 07' 30" West, 108.13 feet to a point; thence
2. 26.53 feet along an arc of a curve to the left having a radius of 541.79' (chord North 08° 31' 40" West, 26.53 feet) to a point; thence
3. 34.38 feet along an arc of a curve to the left having a radius of 20.00' (chord North 59° 11' 00" West, 30.30 feet) to a point; thence
4. North 71° 33' 50" East, 5.25 feet to a point; thence
5. 21.15 feet along an arc of a curve to the left having a radius of 80.00' (chord North 63° 59' 23" East, 21.09 feet) to a point; thence
6. South 86° 39' 15" East, 34.81 feet to a point; thence
7. 56.07 feet along an arc of a curve to the left having a radius of 470.00' (chord South 45° 56' 45" East, 56.03 feet) to a point; thence
8. 132.06 feet along an arc of a curve to the left having a radius of 358.70' (chord South 25° 02' 32" West, 131.31 feet) to the point of beginning, containing 5,891 square feet or 0.1352 acre of land.

**Part 2**

Being a strip of land crossing and being part Ridgefield Road as shown on a plat of subdivision of "Westwood" recorded among the Land Records of Montgomery County, Maryland, as Plat 5026, and being more particularly described as follows:

Beginning for the same at a point on the north line of Westbard Avenue, said point being at the beginning of curve number 4 in Block G as shown on the aforementioned plat of subdivision; thence with said Ridgefield Road

9. North 71° 33' 50" East, 200.23 feet to a point; thence
10. South 44° 01' 12" West, 151.38 feet to a point; thence

**Engineering • Surveying • Planning**  
205 N. Frederick Ave. 100 • Gaithersburg, MD 20877 • (301) 963-1133 • (301) 963-6306 Fax  
www.jba-inc.net

Page 6

11. South  $71^{\circ} 33' 50''$  West, 47.35 feet to a point; thence
12. 79.41 feet along an arc of a curve to the right having a radius of 400.00' (chord North  $40^{\circ} 34' 27''$  West, 79.28 feet) to a point; thence
13. 11.90 feet along an arc of a curve to the left having a radius of 20.00' (chord North  $88^{\circ} 36' 50''$  East, 11.73 feet) to the point of beginning, containing 9,123 square feet or 0.2094 acre of land.

#### SURVEYORS CERTIFICATION

I hereby certify that I was in responsible charge over the preparation of this metes and bounds description and the surveying work reflected in it, all in compliance with the requirements set forth in 09.13.06.12 of the COMAR Regulations.

**Johnson ♦ Bernat ♦ Associates, Inc.**  
Adam S. Bernat, L.S.

Date:



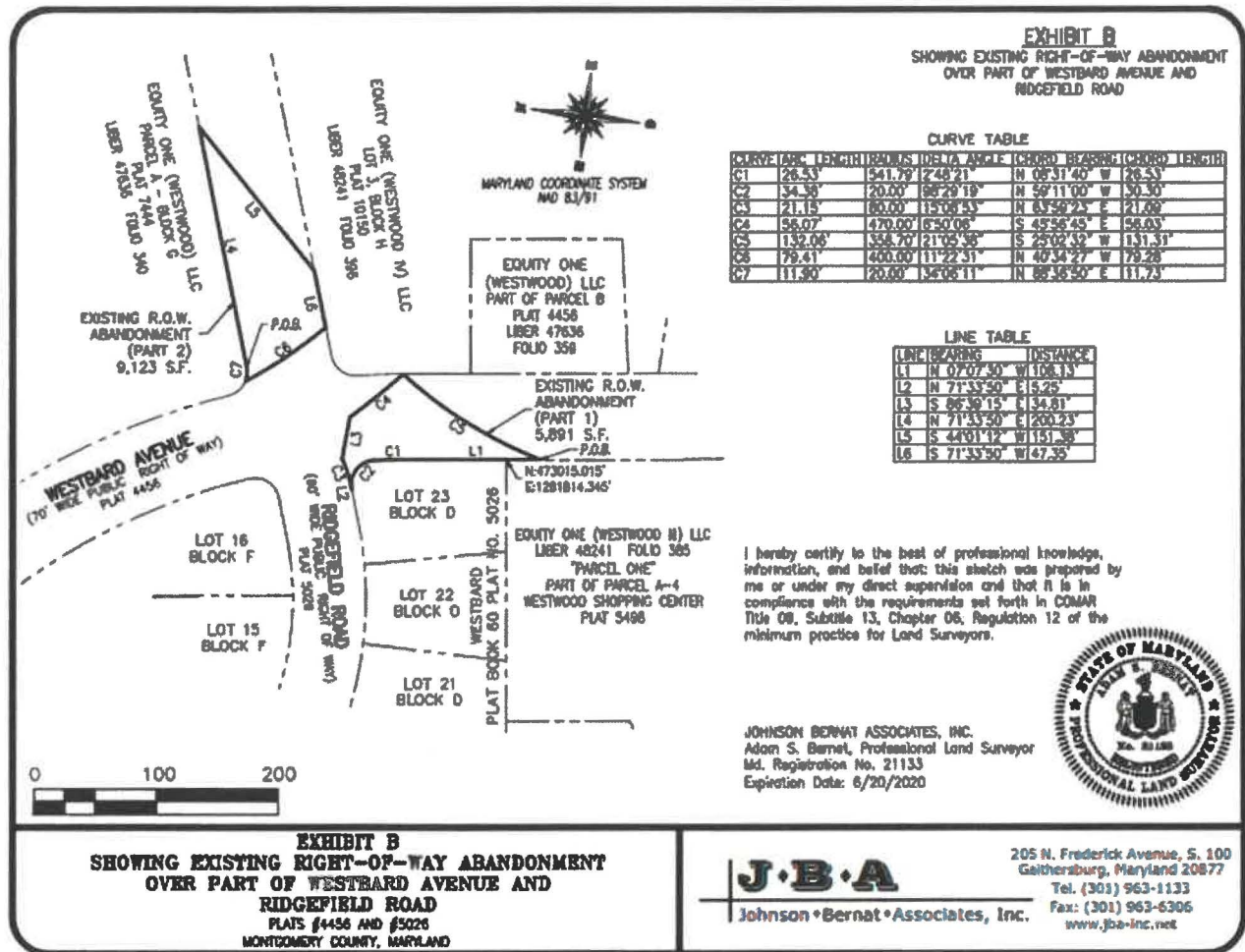
\\Pw\11-000 - Unrecorded\Proposed Easements\ADW Abandonment.doc

#### Engineering ♦ Surveying ♦ Planning

205 N. Frederick Ave. 100 ♦ Gaithersburg, MD 20877 ♦ (301) 963-1133 ♦ (301) 963-6306 Fax  
www.jba-inc.net

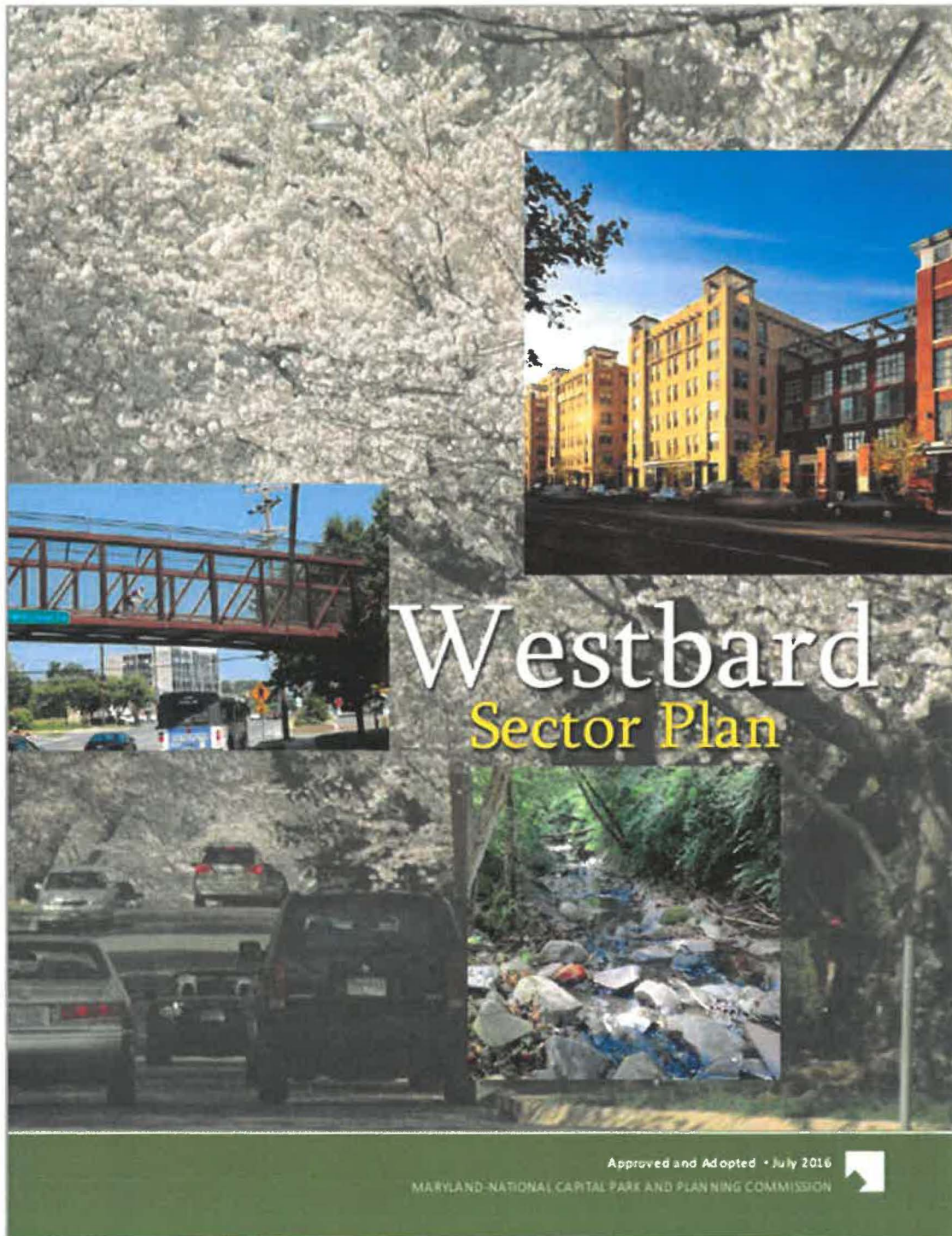


Page 7



103032\000001\4849-8685-7910.v1

**EXHIBIT "C"**





**Table 1.2.2: Specific Short-Term Recommendations**

<b>Description</b>	<b>Category</b>
Provide a Central Civic Green (approximately 16-acre but no less than 1/3 acre) within the Westwood Shopping Center site.	Parks
Provide a neighborhood green urban park at the intersection of realigned Westbard Avenue and Ridgefield Road.	Parks
Naturalize Willett Branch as a stream amenity and provide a pedestrian trail connector within Westbard. Use easements to preclude further encroachment, and an amenity fund to finance these projects.	Parks
Realign Westbard Avenue and Ridgefield Road to create a clear gateway into the retail area and protect single-family neighborhoods.	Transportation
Transform Westbard Avenue into a multi-use, pedestrian-friendly, tree-lined street with wide sidewalks and on-street parking where practicable.	Transportation
Create a pedestrian/vehicular connection between River Road and Westbard Avenue at the American Plant Food and Roof Center sites to provide another connection between the two streets and act as a gateway to the naturalized Willett Branch Urban Greenway.	Transportation
Provide an increase in public and/or provide private shuttle bus service between Westbard and Metrorail stations in Bethesda and Friendship Heights and/or other nearby major destinations to supplement the existing public transit systems.	Transportation
Reduce and control invasive plant species in the area.	Environment
Provide new storm water treatment systems and improve existing systems.	Environment
Provide affordable housing above the County's minimum moderately priced dwelling unit (MPDU) requirement.	Housing
Provide local housing options for active seniors who are seeking to downsize from single-family homes.	Housing
Encourage the development of senior housing options, including assisted-living facilities.	Housing
Maximize moderately priced dwelling unit (MPDU) options for new construction.	Housing
Preserve existing, local-serving light industrial uses.	Land Use
Maintain existing, local-serving retail establishments.	Land Use



- Expand and implement new transit options.
- Accommodate regional mobility while increasing local connectivity.
- Maintain a land use and a transportation balance
- Improve bicycle and pedestrian infrastructure.

## 2.4.2 Roadways

It is recommended that the Westbard Sector Plan area be designated as an Urban Area for the application of Road Code Standards. The area should also be designated as a Bicycle Pedestrian Priority Area (BPPA) to facilitate funding for bicycle and pedestrian improvements.

### A. Roadway Right-of-Way and Design Elements

#### River Road-MD 190 (M-2)

(110-foot minimum right-of-way; West Sector Plan Boundary to East Sector Plan Boundary)

River Road is a major highway that provides east-west local connectivity. The segment contained within the Plan area measures approximately 1,800 linear feet. There are numerous curb cuts along this short segment of roadway that add to traffic stress on River Road. The vast amount of curb cuts contribute to many friction points caused by turning vehicles accessing local businesses, as well as through traffic on River Road. In order to improve operations and enhance the safety on River Road, this Plan recommends that the curb cuts be reduced and driveway access points be consolidated in a logical pattern that allows for improved driveway and intersection spacing. Inter-parcel access should be provided to allow for driveway consolidation. This Plan also recommends the installation of traffic signals on River Road at its intersections with B-2/B-3 (Landy Lane) and with B-4 (Clipper Lane). Finally, a median should be provided with left turn lanes for access to the consolidated driveways.

River Road should contain the following elements within the right-of-way:

- Travel Lanes: Two 11-foot lanes per direction.

- Median: To accommodate a left turn lane and pedestrian refuge area.
- Separated Bike Lane: 11-foot-wide, two-way separated bike lanes (cycle track) on the north side with a buffer.
- Landscape Buffer: To accommodate street trees.
- Sidewalks: Minimum 15-foot-wide (due to constraints associated with the Capital Crescent Trail, the sidewalk may need to be narrower under the CCT bridge)

#### Westbard Avenue – Westbard Circle to Massachusetts Avenue (B-1)

(74-foot minimum right-of-way).

This business district street is the major north-south connection for residents and businesses in the area. A shared-use path is recommended on the west side of the street to facilitate access to the school and library on the west side of the street. The shared-use path will transition to a cycle track and a sidewalk along Street B-1 north of Westbard Circle.

Westbard Avenue should contain the following elements within the right-of-way:

- Travel Lanes: Two 10-11-foot-wide lanes per direction.
- Median: None.
- Landscape Buffer: To accommodate street trees.
- Shared-use Path: Provide on the west side of the street

#### Westbard Avenue extended/Ridgefield Road – Westbard Circle to River Road (B-1)

(110-foot minimum right-of-way; Westbard Circle to Ridgefield Road; 100-foot minimum right-of-way; Westbard Avenue to River Road).

Westbard Avenue, a business district street, heading toward River Road should be reconfigured to tie directly to River Road with a right-angled intersection, instead of teeing into Ridgefield Road. This reconfiguration would create Westbard Avenue extended that would

Figure 2.4.1: Roadway Classifications



**Table 2.4.1: Roadway Classifications**

Designation	Roadway	Limits	Minimum Right-of-Way	Target Speed	Lanes
<b>Major Highway</b>					
M-2	River Road (MD 190)	W. Sector Plan Boundary to E. Sector Plan Boundary	110'	30 mph	4
<b>Business District</b>					
B-1	Ridgefield Road	Westbard Avenue to River Road	100'	25 mph	4
B-1	Westbard Avenue	Ridgefield Road to Westbard Circle	110'	25 mph	4
B-1	Westbard Avenue	Westbard Circle to Massachusetts Avenue	74'	25 mph	4
B-2	New Connector Road	River Road to Westbard Avenue	54'	25 mph	2
B-3	Landy Lane	River Road to Little Falls Parkway	54'	25 mph	2
N/A	Little Falls Parkway	Dorset Avenue to Massachusetts Avenue	N/A	35 mph	2

connect directly with River Road. (Ridgefield Road would be reconfigured to tee into reconfigured Westbard Avenue extended. The block of Westbard Avenue south of River Road would tee into Ridgefield Avenue.) Westbard Avenue should be studied to evaluate the feasibility and implementation of on-street, off-peak parking. Special consideration should be given to implementation of on-street parking on weekends and whether this weekend parking could be accommodated due to the retail and residential demands during those days.

Westbard Avenue should contain the following elements within the right-of-way:

- Travel Lanes: Two lanes per direction.
- Median: 6-foot wide for pedestrian refuge, mountable curb/load bearing construction for emergency access
- Separated Bike Lane: 5-foot-wide, one-way separated bike lane (cycle track) on each side of the road outside of the curb to provide a buffer from traffic.
- Landscape Buffer: To accommodate utility poles.
- Sidewalks: 13-foot-wide at a minimum, except in the realigned portion where they should be 11 feet wide at minimum.

The Montgomery County Department of Transportation should explore whether additional

traffic signals are needed on Westbard Avenue.

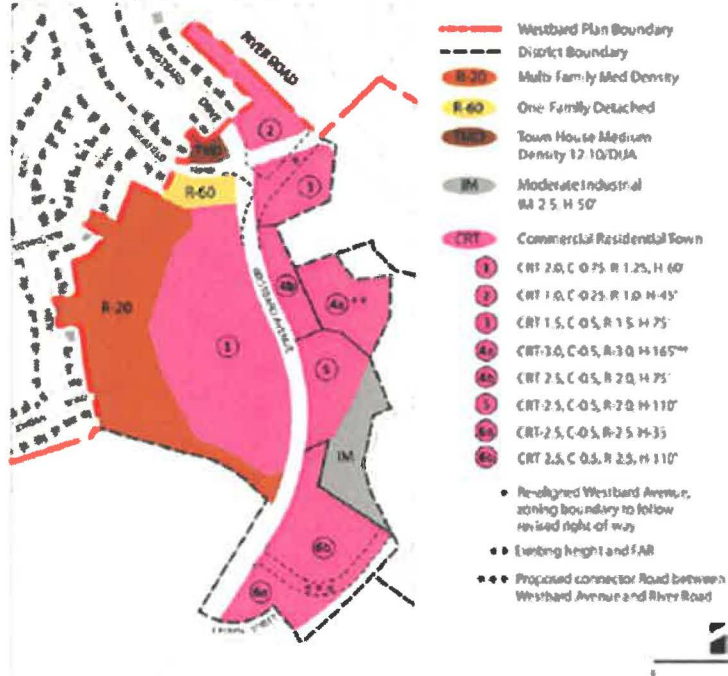
#### Neighborhood Protection: Westbard Avenue (Residential Portion)

This Plan endorses the permanent closure of the residential portion of Westbard Avenue between River Road and Ridgefield Road at the River Road end. The closure should not occur until the existing Westbard Road/River Road intersection is realigned to intersect River Road with a right-angled turn. The closed end should have a 3-inch-high mountable curb to allow emergency vehicles to access the block from River Road. The closed end should be reconstructed to create a turnaround. Action on this closure is predicated on the submittal of a formal neighborhood application for street closure in accordance with Chapter 49 of the County Code, and its subsequent approval by the County Council.

The Department of Transportation and the State Highway Administration should work with the Kenwood community to develop a design and operations plan for the River Road/Brookside Drive intersection that better protects Kenwood from cut-through traffic without restricting safe and convenient access between realigned Westbard Avenue and River Road.



Figure 3.1.1: Proposed Zoning Map - Westbard Avenue District



compatibility with the adjacent residential community to the west. This will allow an increase in the number of residential units from that currently provided for by the existing zoning.

- Maintain commercial density at 0.75 FAR.
- Allow a residential density of 1.25 FAR.
- Maximum heights of 60'.
- Implement strategies to preserve local retail to the extent practical as discussed earlier in this Plan.

#### Site 2 - Manor Care

**Site Description:** 2.15 Acres. Site of Manor Care nursing home, now vacant.  
**Existing Zone:** R-60. Average height is 35'.  
**Existing FAR:** 0.44.

**Proposed Zone:** CRT 1.0, C 0.25, R 1.0, H 45' (Figure 3.1.1 Proposed Zoning Map – Westbard Avenue District).

**Rationale for zoning change:** To allow townhouse development under the CRT zone, which requires contribution to Sector Plan amenities and benefits, while also maintaining compatibility with adjacent single-family neighborhood.

- Allow a Residential FAR of up to 1.0 FAR.
- Limit new development to townhouses.
- Limit height of proposed townhouses to 45 feet and provide appropriate transitions to the adjacent single-family neighborhood.
- The plan strongly encourages Residential as the predominant use for this parcel. Commercial uses are strongly discouraged on this site.

#### Site 3 – Westwood II Center

**Site Description:** 2.25 Acres. Site of the Westwood II shopping center.  
**Existing Zone:** CRT 0.75, C 0.75, R 0.25, H 35. Existing height ranges between 25' and 45'.  
**Existing FAR:** 0.65.  
**Proposed Zone:** CRT 1.5, C 0.5, R 1.5, H 75.

**EXHIBIT "D"****MONTGOMERY COUNTY PLANNING BOARD**

THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Date of Hearing: March 14, 2019

**MAY 06 2019****RESOLUTION**

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

WHEREAS, on December 20, 2016, Equity One (Northeast Portfolio, LLC ("Applicant")) filed an application for approval of a preliminary plan of subdivision of property that would create 111 lots on 23 acres of land in the CRT 2.0, C 0.75, R 1.25, H 60, CRT 1.0, C 0.25, R 1.0, H 45, CRT 1.5, C 0.5, R 1.5, H 75; CRT 2.5, C 0.5, R 2.0, H 75; and CRT 2.5, C 0.5, R 2.0, H 110 zones located along Westbard Avenue and Ridgefield Road, between River Road and Massachusetts Avenue ("Subject Property"), in the Bethesda/ Chevy Chase Policy Area and Westbard Sector Plan ("Sector Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 14, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170170 Westwood Shopping Center ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on December 20, 2016; 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 March 4, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to:

Legal Sufficiency:

Christina Smith, Maryland 2019

M. S. P. C. and Planning Board

Phone: 301.475.6266 Fax: 301.475.1530

E-Mail: mcpb@montgomeryplanning.org

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 2

WHEREAS, on March 14, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on March 14, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor and Commissioner Drayfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170170 to create 111 lots on the Subject Property, subject to the following conditions:<sup>1</sup>

#### **General Approval**

1. This Preliminary Plan is limited to 111 lots for a total development of up to 852,915 square feet, including up to 647,378 square feet of residential uses (up to 104 townhomes and up to 410 multifamily dwelling units) and up to 205,537 square feet of commercial uses (including the 29,305 square feet of commercial uses to remain on Lot 3 Block B/ Bowlmor).

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

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for one hundred twenty (120) months from the date of mailing of the Planning Board Resolution, phased in the following manner, as illustrated on the Certified Preliminary Plan:
  - a. First Phase - 36 months from the 30th day after the Resolution is mailed; or if an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.
  - b. Second Phase - 36 months from the expiration date of the validity period for First Phase.
  - c. Third Phase - 24 months from the expiration date of the validity period for Second Phase.
  - d. Fourth Phase - 24 months from the expiration date of the validity period for Third Phase.

---

<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.



MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 3

Outside Agencies

3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its Traffic Impact Study and Traffic Signal Warrant Study letter dated February 28, 2019 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 4, 2019 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 any plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated August 23, 2018 and as amended by emails dated January 4, 2019 and January 30, 2019 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 MSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") - Water Resources Section in its stormwater management concept letter dated February 27, 2019 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. All future Site Plans will be required to submit updated stormwater management concept plans to reflect proposed development.
9. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated February 14, 2019, and hereby 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 amendments do not conflict with other conditions of Preliminary Plan approval.

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 4

### **Other Approvals**

#### Concurrent Site Plan Approval

10. Prior to approval of a record plat or clearing or grading for the Subject Property, the Applicant must receive certification of Site Plan No. 820180190. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, landscape, hardscape, open space, sidewalks and bike paths is determined through site plan review and approval.
11. If a proposed site plan amendment for the Subject Property substantially modifies the lots, right-of-way configurations, or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment in conjunction with a site plan amendment.
12. Each site covered by Preliminary Plan 120170170 must obtain Site Plan approval prior to any future development on that particular property.

#### **Forest Conservation**

13. For all properties included under Preliminary Plan 120170170, the Applicant must obtain approval of an overall certified Preliminary/Final Forest Conservation Plan (FFCP) from the Planning Department prior to any clearing, grading or demolition for the applicable phase. Future Site Plan approvals for implementation of subsequent phases of the larger site covered by the Preliminary Plan will address the remaining forest conservation requirements associated with each future phase and will include a Final Forest Conservation Plan for these phases. Each Site Plan or Site Plan amendment covered by this overall FFCP must address the following.
  - a. The locations of trees credited towards variance mitigation plantings must be at least 5 feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
  - b. Prior to any clearing, grading and demolition for each applicable phase, the off-site forest conservation requirements for each phase must be addressed by submitting a certificate of compliance to use an off-site forest mitigation bank to satisfy the required credits as determined in the certified Forest Conservation Plan.
14. Before demolition, clearing, or grading on the Manor Core Site, the Applicant must record a Category I Conservation Easement among the Montgomery County Land Records by deed. The deed must be in a form approved by the M-NCPPC Office of the General Counsel, and the Book and Page for the easement must be referenced on the record plat.

#### **Transportation**

##### Existing Frontage Improvements

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 5

15. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads
  - a. All land necessary to accommodate 55 feet from the existing pavement centerline along the Subject Property frontage for River Road (MD 190);
  - b. All land necessary to accommodate a right-of-way width of 120 feet on Westbard Avenue, between River Road and Private Street A, as shown on the Certified Preliminary Plan; and
  - c. All land necessary to accommodate an ultimate right-of-way width of 110 feet Westbard Avenue, between Private Street A/ Westbard Circle and the southern loading entrance, except along Lot 1, Block B (Parking Lot 1) Lot 2, Block B (Parking Lot 2), Lot 3, Block B (Bowlmor), which will be subject to an easement for future right-of-way dedication, as shown on the Certified Preliminary Plan.
16. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to construct sidewalk(s) and separated bicycle lane along Westbard Avenue as shown on the Certified Preliminary Plan.

#### Off-Site Improvements

17. Prior to the issuance of the Use and Occupancy Certificate for the Core and Shell for the Commercial Building, the Applicant must construct interim improvements at the intersections of River Road and Ridgefield Road and Westbard Avenue and Ridgefield Road, or if the construction of the realignment of Westbard Avenue, as defined by demolition of existing Ridgefield Road, provide maintenance of traffic as needed to facilitate truck and construction traffic prior to completion of the realignment, with priority to construct the geometric improvements to the intersection of River Road and Ridgefield Road as specified by MCDOT and MDSHA.
18. Prior to Use and Occupancy Certificate for the Commercial Building, the Applicant must file for abandonment of portions of Ridgefield Road and Westbard Avenue.
19. If applicable, prior to plat approval for the Manor Care site and in accordance with the Westbard Sector Plan, the Applicant must file a corrective map amendment (CMA) changing the underlying R-60 zone within the Westbard Avenue abandonment limits to be consistent with the CRT 1.0, C 0.25, R 1.0, H 45' zone associated with the Manor Care site.
20. Prior to issuance of the Use and Occupancy Certificate for the 55<sup>th</sup> townhouse unit for Site Plan 820180190, the Applicant must construct and dedicate to public use the realigned Westbard Avenue, as illustrated on the Certified Preliminary Plan. In conjunction, the Applicant must
  - a. Meet all design standards imposed by all applicable road codes; and



MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 6

- b. Secure a County Council resolution abandoning the portions of existing Westbard Avenue/ Ridgefield Road rights-of-way that are no longer needed for transportation purposes.

#### Private Roads

21. The Applicant must provide private roads, "Westbard Circle," "Street A," "Street B," and "Street C," 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 or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
  - a. If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel. If there are structures above or below the private Road, the record plat must clearly delineate the Private Road and include metes and bounds description of the boundaries of the Private Road.
  - b. The Private Road must be designed and constructed according to the Montgomery County Road Code Standard MC 2005.01 per the modified typical section specified by the subsequent Site Plan.
  - c. Prior to issuance of the final Use and Occupancy Certificate for the Commercial Building, 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 Road has 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, as may be modified on this Preliminary Plan or a 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.
  - d. Prior to recordation of the plat, the Applicant must submit to Staff an agreement or other legal instrument that assigns responsibility for the long-term maintenance of the Private Road. To the extent possible the agreement must conform to the requirements set forth in the covenant recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338. The agreement must be approved by the Commission's Office of the General Counsel, recorded in the Montgomery County Land Records, and referenced on the plat.
  - e. Prior to issuance of the final Use and Occupancy Certificates for the townhouses on Lots 1-15, Block A at Westwood Shopping Center, all private streets must be completed to base course of asphalt and streetscape improvements completed on the townhouse side of the street and inspected by MCDPS.

**MCPB No. 19-032**  
**Preliminary Plan No. 120170170**  
**Westwood Shopping Center**  
**Page 7**

**Record Plats**

22. The Applicant may not perform clearing or grading of any site prior to recordation of the plat for each site.

**Easements, Dedications, Open Space**

23. The record plat must show necessary easements and dedications.
24. The Applicant must record an easement for the Sector Plan recommended pedestrian connection from Westhard Avenue to the future Willett Branch Greenway on Parking Lot 1 (Lot 1, Block B).
25. The record plat must reflect all areas under common ownership.
26. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28015 Page 578 ("Covenant").

**Parkland**

27. The Applicant must convey in fee simple to the Maryland-National Capital Park and Planning Commission (M-NCPPC), at no cost and via plat at the same time as the first plat for Site Plan 820180190, the following areas for use as public park land for the Willett Branch Greenway, as shown on the Certified Preliminary Plan:
  - i. The portion of unimproved land at Lot 2, Block H, at the existing Westwood II Shopping Center and associated parking lot; and
  - ii. The area shown as Lot 3, Block B.
  - iii. The Applicant must provide for invasive species management in dedicated areas.
28. Prior to the first record plat for Site Plan 820180190, the Applicant must record a covenant to M-NCPPC for future conveyance in fee simple of the portion of land at Lot 2, Block H, currently improved with the existing Westwood II Shopping Center and associated parking lot. The covenant must be shown on the Certified Preliminary Plan and be recorded in the land records of Montgomery County.
29. At Lot 3, Block B (Bowlmor), the Applicant must grant to M-NCPPC a 20-foot-wide parks maintenance access easement reaching the east side of the Willett Branch conveyance area for access to the Willett Branch Urban Greenway.
30. If applicable, prior to any land disturbance, the Applicant must comply with all relevant laws and regulations concerning burial sites and an inventory of burial sites and coordinate all activity relevant to these laws and regulations with Montgomery County Planning Department's Historic Preservation Section Archaeologist.

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 8

### **Certified Preliminary Plan**

31. The Applicant must include the stormwater management concept approval letter, other applicable agency letters and the Preliminary Plan Resolution on the approval or cover sheet(s).

32. 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 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.*

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

- a. Revise the Westwood Shopping Center townhouse layout to remove the double 90-degree turn in the proposed alley adjacent to townhouse lots 50-56.
- b. Create a new common ownership parcel behind townhouse lots 62-70 for stormwater management conveyance in accordance with MCDPS approved Stormwater Management Concept Plan.
- c. Revise drawings to show a common ownership parcel for stormwater management behind townhouse lots 57-61.
- d. Revise the Manor Care Category I Easement boundary on all appropriate sheets consistent with the Category I Easement shown on Sheet PP 5.
- e. Rectify inconsistencies between plan graphics/notes/figures/tables.
- f. Modify data table to reflect development standards approved by the Planning Board.

34. Future Coordination Issues for Site Plan Review

- a. Westwood II  
 Future development must be designed and constructed to minimize adverse impacts on the future implementation of the Willett Branch Greenway.
- b. Manor Care
  - i. Maximize plantings in and along the River Road right of way;
  - ii. Obtain the services of a consultant specialized in stream restoration to address the details of the environmental enhancements, including
    1. Bank stabilization/stream enhancements;
    2. Invasive control;
    3. Re/afforestation planting and planting of supplemental native species within retained forest areas within the Category I Easement area and right-of-way, as applicable;
    4. Address fences encroaching into the Category I Conservation Easement on the Manor Care site;



MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 9

- 5. Soil restoration for restored areas; and
- 6. Monitoring and maintenance.
- iii. Revised noise study updated per proposed design.

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

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

The Approved and Adopted 2016 Westbard Sector Plan ("Sector Plan" or "Plan") envisions Westbard as a vibrant walkable village center adjacent to an enhanced Willett Branch Greenway (Sector Plan, p. 6). Toward that vision, the Sector Plan provided specific recommendations for development of the Subject Property and amenities for the entire Sector Plan area (e.g. the realignment of Westbard Avenue and establishment of the Willett Branch Greenway). Both the site-specific and Sector Plan area recommendations are incorporated in the Subject Application and discussed in more detail below.

The Site is located within the area designated by the Sector Plan as "the Westbard Avenue District." Specific Sector Plan recommendations include transforming the existing surface parking lots into an inviting, livable, walkable village with stores and apartments and providing new open spaces. Each of the site-specific recommendations are summarized below.

**Land Use**

**Westwood Shopping Center**

For the Shopping Center site, designated Site 1, the Sector Plan envisioned a mixed-use commercial and residential redevelopment with a maximum building height of 60 feet. In support of the redevelopment on this site, the Sector Plan recommends a central civic green (measuring approximately 1/3 of an acre), a new neighborhood park, and an internal circulation network.

The Application provides a new mixed-use development with a Multi-Family Building with ground-floor retail, a new Commercial Building (expected to accommodate the new Giant supermarket), and up to 70 townhomes. The Applicant will also design and construct a new central civic green, the new Springfield Neighborhood Green Urban Park to be conveyed to M-NCPPC, and a new internal circulation system. The development on the Westwood Shopping Center site conforms to the recommendations of the Sector Plan.

**MCPB No. 19-032**  
**Preliminary Plan No. 120170170**  
**Westwood Shopping Center**  
**Page 10**

#### **Manor Care**

For this site, identified as Site 2, the Sector Plan recommends residential townhouse development, limited to 45 feet in height, with commercial uses on this site strongly discouraged. The development of this site is significantly enlarged by the Sector-Plan-recommended realignment of Westbard Avenue and its intersection with Ridgefield Road, discussed below, and the site layout reflects this major public improvement. The Sector Plan also provides specific restrictions on the location of the townhouses, including behind the existing single-family homes and limiting encroachment into the Stream Valley Buffer around the Kenwood Tributary, except where removal of existing paved areas is necessary to mitigate and replant the northerly strip along River Road. As conditioned, the development conforms to these recommendations for the purposes of Preliminary Plan review. Development on this site will be the subject of a future Site Plan application and conformance with the Sector Plan will be reevaluated at that time. The Sector Plan (p. 73) also identifies the possibility for a Corrective Map Amendment that would involve the Manor Care site combined with the road abandonment.

#### **Westwood II**

For this site, identified as Site 3, the Sector Plan recommends a mixed-use development with a maximum building height of 75 feet coupled with the naturalization of the Willett Branch, which runs through the northern portion of the Subject Property. This site is also significantly impacted by the recommended realignment of Westbard Avenue and Ridgefield Road. The reduced site is reflected on the Preliminary Plan and as conditioned at this stage conforms to the recommendations of the Sector Plan. Development on this site will be the subject of a future Site Plan application and will be re-evaluated then.

#### **Transportation Network**

As a major improvement to the circulation system of the Sector Plan Area, the Sector Plan recommends the realignment of Westbard Avenue (Street B-1), and its intersection with Ridgefield Road. As part of the Subject Application, in coordination with County and State transportation agencies, the Applicant will construct the realigned Westbard Avenue. Additionally, the Applicant will implement Sector-Plan-recommended streetscape improvements along Westbard Avenue to improve the safety and comfort of all roadway users. As conditioned, the Applicant will provide the necessary improvements to the transportation network and satisfies the Sector Plan recommendations.

#### **Open Space and Environment**

As discussed above, the Public Open Spaces are consistent with the Sector Plan recommendations. Specific discussion of each of these elements is discussed below:

**MCPB No. 19-032**  
**Preliminary Plan No. 120170170**  
**Westwood Shopping Center**  
**Page 11**

- **Central Civic Green:** The Sector Plan recommends a new Central Civic Green, measuring between one-half acre and one-third acre, to be located on the Westwood Shopping Center site. The Sector Plan envisions this Public Open Space as a gathering place supported by amenities necessary to make the space an appealing destination for the entire community.
- **Springfield Neighborhood Green Urban Park:** The Sector Plan recommends a new neighborhood park, measuring between one-half acre and one-third acre, at the intersection of Ridgfield Road and Westbard Avenue. Although this space is envisioned as a buffer between the Westwood Shopping Center site and adjacent Springfield Neighborhood, the Sector Plan specifically recommends that it be programmed to serve both workers from the Westbard Avenue District and residents from the neighborhood and designed for more activity than an urban buffer park.
- **Willett Branch Greenway:** The Sector Plan envisions rehabilitation of the Willett Branch to improve both its ecology and community benefit. Toward this goal, the Sector Plan recommends that the Willett Branch be buffered from development, naturalized, and improved with environmentally sensitive public amenities.

As conditioned, the open spaces and Willett Branch accommodations satisfy the Sector Plan recommendations.

#### **Housing**

The Sector Plan places a high priority on the provision of new affordable housing for Optional Method development. Since the development is under the Standard Method, this recommendation does not strictly apply. However, with over 500 new dwelling units, the development will provide 63 total new MPDUs in both the multi-family and townhouse units.

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

As a Preliminary Plan application accepted on December 20, 2016, The Application was reviewed under the Subdivision Regulations in effect prior to February 13, 2017, and the 2012 – 2016 Subdivision Staging Policy (SSP). For this reason, technical evaluation of the intersection capacity is based on the Critical Lane Volume (CLV) methodology and is limited to vehicular impacts rather than the Highway Capacity Manual (HCM) methodology and multi-modal analysis associated with the current 2016-2020 SSP.



MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 12

The Applicant submitted a transportation study, dated June 14, 2018, estimating the development's impact to the transportation network. Based on that analysis, sufficient intersection capacity exists to serve the Project. The Applicant will implement interim improvements to improve existing transportation issues on Westbard Avenue and will implement the Westbard Avenue Realignment, which is anticipated to improve traffic flow in the immediate vicinity of the project.

#### School Adequacy Analysis

##### **Overview and Applicable School Test**

Preliminary Plan 120170170, Westwood Shopping Center, is subject to the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. The Application includes 410 multifamily high-rise dwelling units and 106<sup>2</sup> single family attached dwelling units on land with no dwelling units currently.

##### **Calculation of Student Generation**

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

Per Unit Student Generation Rates – Southwest Region

	Elementary School	Middle School	High School
<b>SF Detached</b>	0.193	0.111	0.147
<b>SF Attached</b>	0.191	0.094	0.124
<b>MF Low- to Mid-Rise</b>	0.146	0.063	0.083
<b>MF High-Rise</b>	0.055	0.022	0.031

With a net of 410 new multifamily high-rise dwelling units and 106 new single family attached dwelling units, the project is estimated to generate the following number of students:

<sup>2</sup> School capacity analysis tested for 106 SF Attached, however the latest submitted plans include 104 SF Attached.

MCPB No. 19-032  
Preliminary Plan No. 120170170  
Westwood Shopping Center  
Page 13

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Attached	106	0.191	20.246	0.094	9.964	0.124	13.144
MF High-rise	410	0.055	22.550	0.022	9.020	0.031	12.710
<b>TOTAL</b>	<b>516</b>		<b>42</b>		<b>18</b>		<b>25</b>

This project is estimated to generate 42 new elementary school students, 18 new middle school students, and 25 new high school students.

#### Cluster Adequacy Test

The project is located in the Walt Whitman High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Whitman Cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2023			Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	2,410	2,539	94.9%	3,047	2,452
Middle	1,336	1,502	88.9%	1,803	1,354
High	2,129	2,397	88.8%	2,877	2,154

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the last column, the projected enrollment plus the estimated impact of this Application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

#### Individual School Adequacy Test

The applicable elementary and middle schools for this project are Wood Acres ES and Thomas W. Pyle MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

MCPB No. 19-032  
Preliminary Plan No. 120170170  
Westwood Shopping Center  
Page 14

School	Projected School Totals, September 2023				Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus / Deficit	120% Utilization	Surplus / Deficit	
Wood Acres ES	641	725	88.4%	+84	871	835	683
Pyle MS	1,336	1,502	88.9%	+166	1,803	1,682	1,354

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

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the last column, the projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for both Wood Acres ES and Pyle MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

#### **School Capacity Analysis Conclusion**

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development included in this application.

#### **Other Public Facilities**

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

#### **Adequate Public Facility Validity Period**

In accordance with Section 50-20(c)(3)(B) of the Subdivision Code, the Applicant requested a validity period longer than the minimum specified in the Code. That request set forth a detailed phasing plan demonstrating when each phase of



MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 15

development would be completed. As conditioned, the Adequate Public Facility review for the Preliminary Plan will remain valid for one hundred twenty (120) months, phased in the following manner:

1. First Phase - 36 months from the 30th day after the Resolution is mailed; or if an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.
  2. Second Phase - 36 months from the expiration date of the validity period for First Phase.
  3. Third Phase - 24 months from the expiration date of the validity period for Second Phase.
  4. Fourth Phase - 24 months from the expiration date of the validity period for Third Phase.
3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated*

The size, width, shape, and orientation of the lots is appropriate for the location of the subdivision taking into account the recommendations included in the Sector Plan, and for the type of development or uses contemplated. The Application complies with the land use recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the mix of uses. Under Section 59.4.5.4 of the Zoning Ordinance, the dimensional standards for the lot will be determined with approval of the subsequent Site Plans.

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

#### A Forest Conservation

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

The entire site is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). A Preliminary Forest Conservation Plan (PFCP) has been submitted for the all the properties under ownership of the Applicant in the Westward area and a Final Forest Conservation Plan (FFCP) has been included for the Westwood Shopping Center site. As typical with other phased projects, the forest conservation requirements for any particular phase must be satisfied before any clearing or grading occurs within that phase. The afforestation requirements will be satisfied in part by the establishment of an onsite

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 16

Category I easement at the Manor Care site and also by the purchase of equivalent credits in an offsite forest conservation bank

#### B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to ten (10) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

Table 7: VARIANCE TREES AS PROPOSED FOR REMOVAL

Tree #	Scientific Name/ Common Name	D.B.H. (inches)	Field Condition	CRZ Impacts (%)	Disposition
12	<i>Quercus palustris</i> /pin oak	38	Good	N/A	Removal
13	<i>Quercus palustris</i> /pin oak	30	Fair/Poor	N/A	Removal
14	<i>Quercus palustris</i> /pin oak	30	Poor	N/A	Removal
37	<i>Quercus palustris</i> /pin oak	34	Good	N/A	Removal
1014	<i>Prunus serotina</i> /black cherry	49	Fair	N/A	Removal
1016	<i>Robinia pseudoacacia</i> /black locust	39	Fair	N/A	Removal

Table 8: VARIANCE TREES AS PROPOSED FOR IMPACT

Tree #	Scientific Name/ Common Name	D.B.H. (inches)	Field Condition	CRZ Impacts (%)	Disposition
3	<i>Quercus palustris</i> /pin oak	31	Good	25.2	Save
4	<i>Quercus palustris</i> /pin oak	30	Good	30.1	Save
22	<i>Quercus palustris</i> /pin oak	36	Good	4.3	Save
1018	<i>Robinia pseudoacacia</i> /black locust	30	Fair	23.2	Save

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

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 17

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

Most of the removals are for subject trees in the ROW and their retention would otherwise preclude the Sector-planned ROW modifications. Furthermore, the impacts to tree 1018 are needed to implement an environmental enhancement project which is also recommended by the Sector Plan. Therefore, the variance request would be granted to any Applicant in a similar situation.

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

The requested variance is based on development allowed under the existing zoning and recommended by the Sector Plans. The variance can be granted under this finding if the impacts are avoided or minimized and that any necessary mitigation is provided as conditioned.

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 generally a result of the implementation of the Sector Plan recommendations 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.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The subject area currently contains widespread areas of impervious surfaces with no known SWM facilities. The redevelopment will include green roofs and other formal SWM treatments in addition to environmental enhancements within the SVB at the Manor Care site (such as the removal of a linear parking lot and replacement with forest plantings in addition to stream bank stabilization work). Other water quality aspects of the project include dedication of land for the Willett Branch Greenway which will ultimately remove the existing concrete channel as part of the overall for stream naturalization. The DPS review and approval of the sediment and erosion control and stormwater management plans will help ensure that appropriate standards are met.



MCPB No. 19-032  
Preliminary Plan No. 120170170  
Westwood Shopping Center  
Page 18

Additionally, the variance mitigation plantings will contribute to the water quality goals.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1" DBH for every 4" DBH removed. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on February 27, 2019. As the Applicant proceeds with future development of the properties covered by this Preliminary Plan, DPS will be reviewing updated stormwater concept plans at the time of Site Plan.

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 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 06 2019 (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

Page 32

MCPB No. 19-032  
 Preliminary Plan No. 120170170  
 Westwood Shopping Center  
 Page 19

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

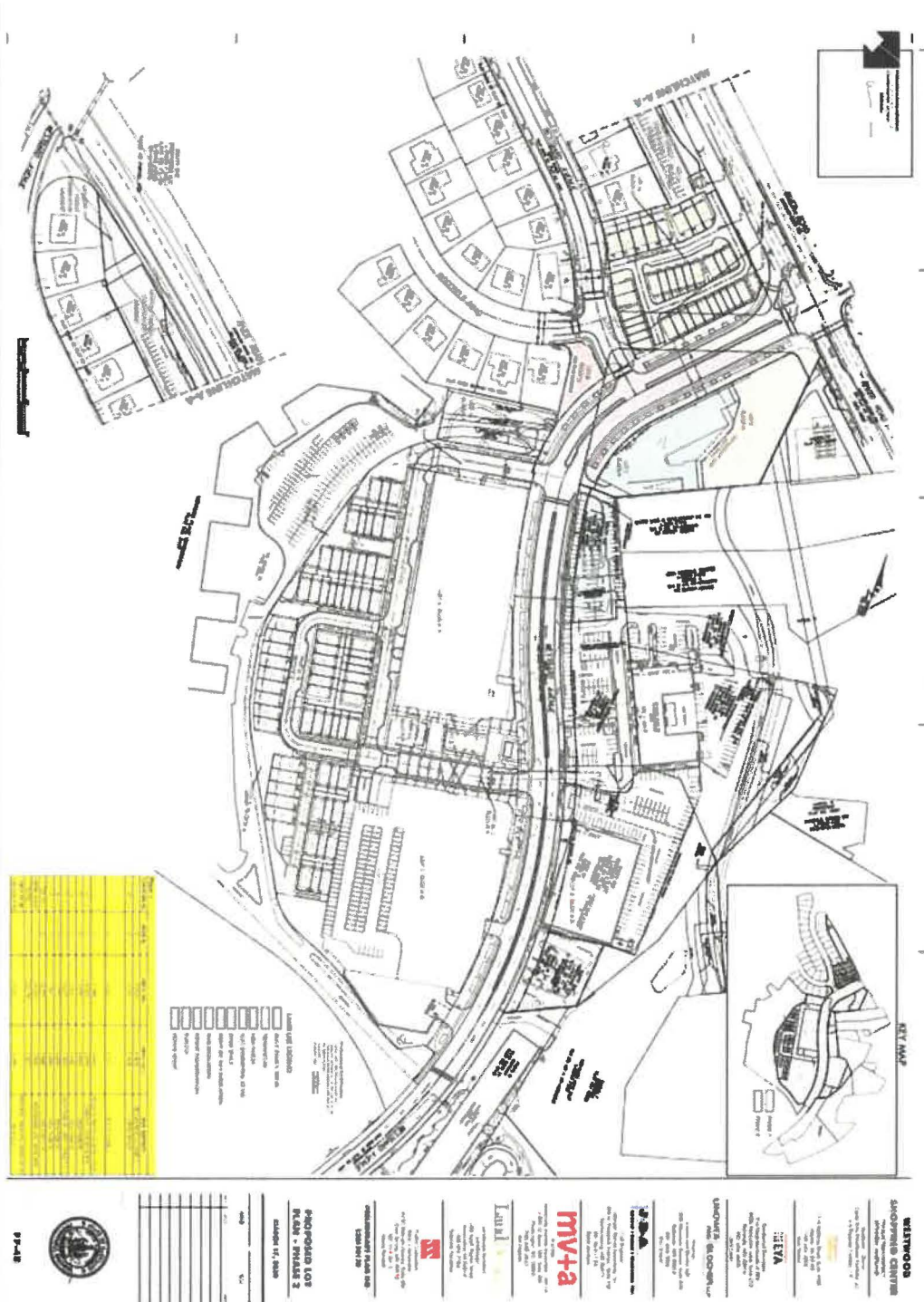
\* \* \* \* \*

#### CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.

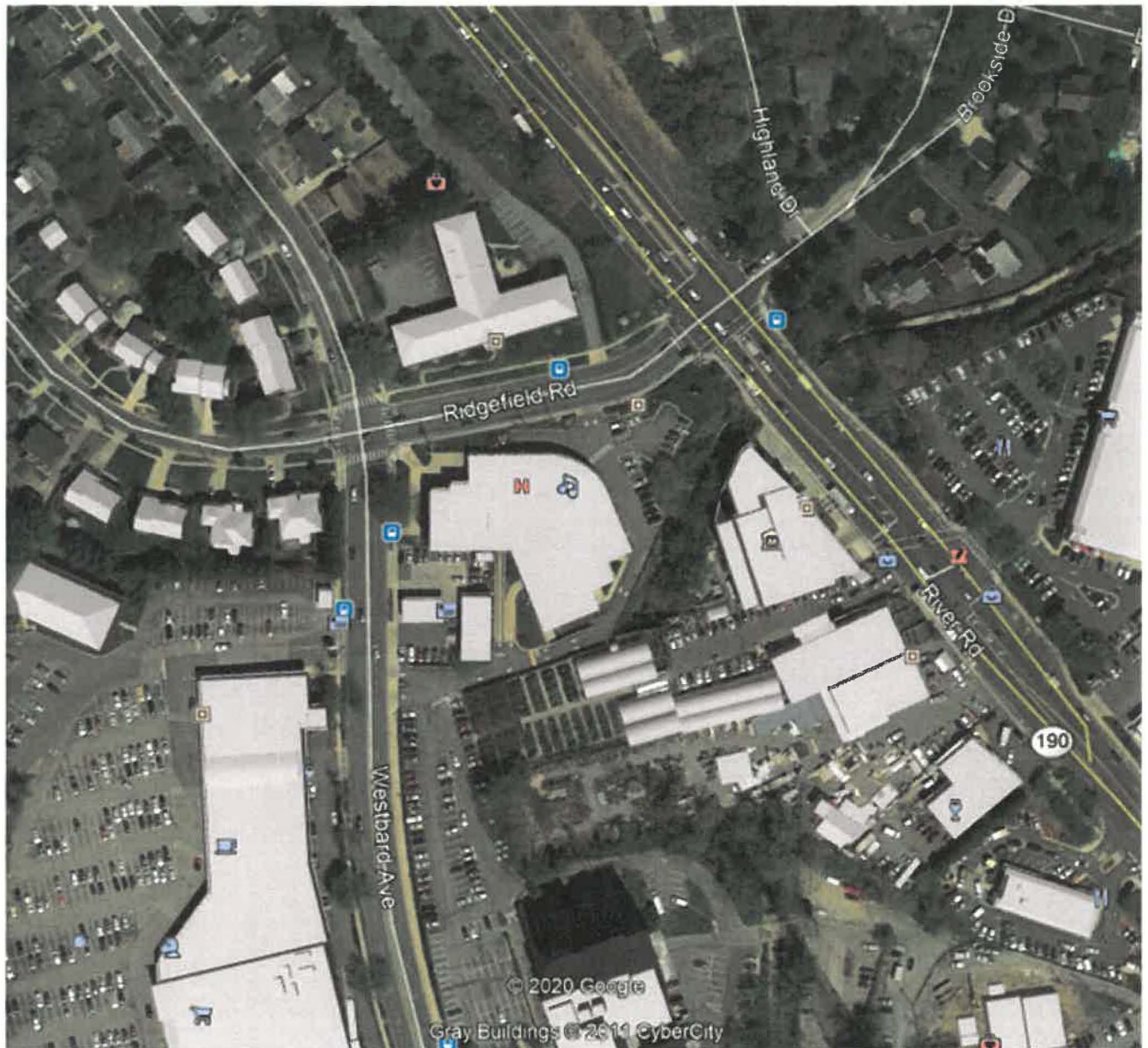
  
 \_\_\_\_\_  
 Casey Anderson, Chair  
 Montgomery County Planning Board

Exhibit "E"





## AERIAL OF EXISTING CONDITIONS



## TAX MAP

Montgomery County

New Search (<https://data.del.maryland.gov/RealProperty/>)District: **07** Account Number: **00662943**

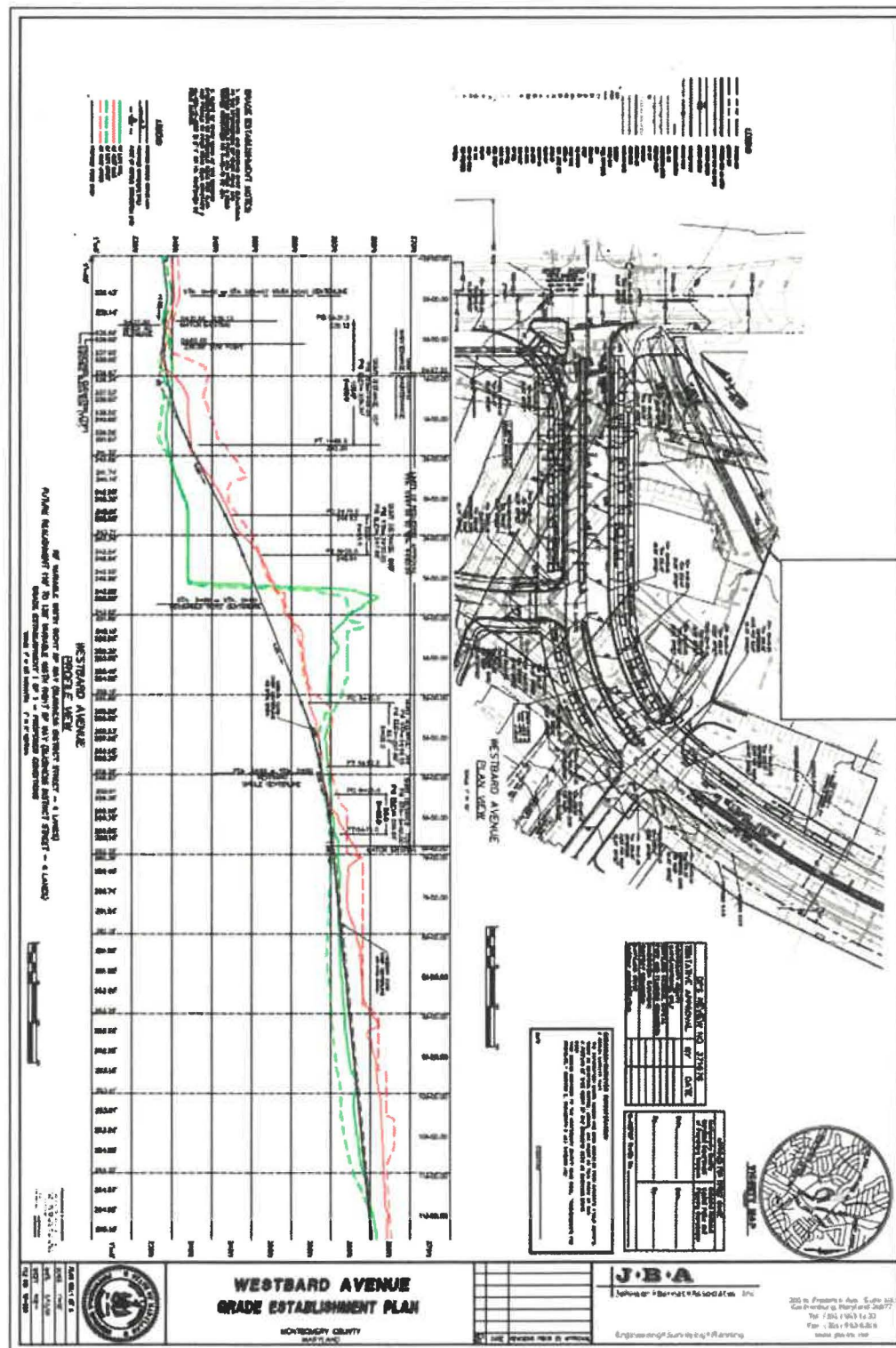
The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at [www.plats.net](http://www.plats.net) (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at <http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx> (<http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx>)







Page 37

**List of Westhard Avenue Property Owners for Abandonment  
May 21, 2020**

Tax Account No.	Name	Department	Address1	City	State	PostalCode	Parcel	Block	Lot
			<b>Subject Property</b>						
07-00662885	Equity One Westwood IV LLC		P.O. Box 790830	San Antonio	TX	78279		H	J
07-00662874	Equity One (Westwood) LLC	c/o Property Tax Dept.	P.O. Box 790830	San Antonio	TX	78279-0830		G	
07-00662921	Equity One (Westwood) LLC		P.O. Box 790830	San Antonio	TX	78279-0830	N128		
07-00662830	Marcos Chaston Rev. Trust	Rita Raulito Chaston Rev. Trust	5200 Ridgely Road	Berkeley	MD	20815-3332		D	23
07-00663943	Equity One (Westwood III) LLC		P.O. Box 790830	San Antonio	TX	78279-0830	N195		

103032\000001\4849-8685-7910.v1



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

MCPB No. 19-032  
Preliminary Plan No. 120170170  
**Westwood Shopping Center**  
Date of Hearing: March 14, 2019

**MAY 06 2019**

**RESOLUTION**

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

WHEREAS, on December 20, 2016, Equity One (Northeast Portfolio), LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 111 lots on 23 acres of land in the CRT 2.0, C 0.75, R 1.25, H 60; CRT 1.0, C 0.25, R 1.0, H 45; CRT 1.5, C 0.5, R 1.5, H 75; CRT 2.5, C 0.5, R 2.0, H 75; and CRT 2.5, C 0.5, R 2.0, H 110 zones, located along Westbard Avenue and Ridgefield Road, between River Road and Massachusetts Avenue ("Subject Property"), in the Bethesda/ Chevy Chase Policy Area and *Westbard Sector Plan* ("Sector Plan") area; and

WHEREAS, Subdivision Regulation Amendment 16-01, adopted by the Montgomery County Council on November 15, 2016 as Ordinance No. 18-19, replaced Chapter 50, Subdivision of Land in its entirety, effective February 13, 2017 ("Subdivision Regulations"); and

WHEREAS, Ordinance 18-19 provided that any preliminary plan application filed and certified as complete before the effective date of the Subdivision Regulations may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170170 Westwood Shopping Center ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant opted to have this Preliminary Plan reviewed under the Subdivision Regulations in effect on December 20, 2016; 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, March 4, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to  
Legal Sufficiency

*Christina Sout* 4/2/19

87873 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
MNCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

WHEREAS, on March 14, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on March 14, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170170 to create 111 lots on the Subject Property, subject to the following conditions:<sup>1</sup>

#### **General Approval**

1. This Preliminary Plan is limited to 111 lots for a total development of up to 852,915 square feet, including up to 647,378 square feet of residential uses (up to 104 townhomes and up to 410 multifamily dwelling units) and up to 205,537 square feet of commercial uses (including the 29,305 square feet of commercial uses to remain on Lot 3 Block B/ Bowlmor).

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

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for one hundred twenty (120) months from the date of mailing of the Planning Board Resolution, phased in the following manner, as illustrated on the Certified Preliminary Plan:
  - a. First Phase - 36 months from the 30th day after the Resolution is mailed; or if an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.
  - b. Second Phase - 36 months from the expiration date of the validity period for First Phase.
  - c. Third Phase- 24 months from the expiration date of the validity period for Second Phase.
  - d. Fourth Phase - 24 months from the expiration date of the validity period for Third Phase.

---

<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.



Outside Agencies

3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its Traffic Impact Study and Traffic Signal Warranty Study letter dated February 28, 2019 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 4, 2019 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 any plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated August 23, 2018 and as amended by emails dated January 4, 2019 and January 30, 2019 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
8. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated February 27, 2019 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. All future Site Plans will be required to submit updated stormwater management concept plans to reflect proposed development.
9. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated February 14, 2019, and hereby 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 amendments do not conflict with other conditions of Preliminary Plan approval.

## **Other Approvals**

### **Concurrent Site Plan Approval**

10. Prior to approval of a record plat or clearing or grading for the Subject Property, the Applicant must receive certification of Site Plan No. 820180190. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, landscape, hardscape, open space, sidewalks and bike paths is determined through site plan review and approval.
11. If a proposed site plan amendment for the Subject Property substantially modifies the lots, right-of-way configurations, or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment in conjunction with a site plan amendment.
12. Each site covered by Preliminary Plan 120170170 must obtain Site Plan approval prior to any future development on that particular property.

## **Forest Conservation**

13. For all properties included under Preliminary Plan 120170170, the Applicant must obtain approval of an overall certified Preliminary/Final Forest Conservation Plan (FFCP) from the Planning Department prior to any clearing, grading or demolition for the applicable phase. Future Site Plan approvals for implementation of subsequent phases of the larger site covered by the Preliminary Plan will address the remaining forest conservation requirements associated with each future phase and will include a Final Forest Conservation Plan for those phases. Each Site Plan or Site Plan amendment covered by this overall FFCP must address the following:
  - a. The locations of trees credited towards variance mitigation plantings must be at least 5 feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
  - b. Prior to any clearing, grading and demolition for each applicable phase, the off-site forest conservation requirements for each phase must be addressed by submitting a certificate of compliance to use an off-site forest mitigation bank to satisfy the required credits as determined in the certified Forest Conservation Plan.
14. Before demolition, clearing, or grading on the Manor Care Site, the Applicant must record a Category I Conservation Easement among the Montgomery County Land Records by deed. The deed must be in a form approved by the M-NCPPC Office of the General Counsel, and the Book and Page for the easement must be referenced on the record plat.

## **Transportation**

### **Existing Frontage Improvements**

15. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a. All land necessary to accommodate 55 feet from the existing pavement centerline along the Subject Property frontage for River Road (MD 190);
  - b. All land necessary to accommodate a right-of-way width of 120 feet on Westbard Avenue, between River Road and Private Street A, as shown on the Certified Preliminary Plan; and
  - c. All land necessary to accommodate an ultimate right-of-way width of 110 feet Westbard Avenue, between Private Street A/ Westbard Circle and the southern loading entrance, except along Lot 1, Block B (Parking Lot 1) Lot 2, Block B (Parking Lot 2), Lot 3, Block B (Bowlmor), which will be subject to an easement for future right-of-way dedication, as shown on the Certified Preliminary Plan.
16. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to construct sidewalk(s) and separated bicycle lane along Westbard Avenue as shown on the Certified Preliminary Plan.

#### Off-Site Improvements

17. Prior to the issuance of the Use and Occupancy Certificate for the Core and Shell for the Commercial Building, the Applicant must construct interim improvements at the intersections of River Road and Ridgefield Road and Westbard Avenue and Ridgefield Road, or if the construction of the realignment of Westbard Avenue, as defined by demolition of existing Ridgefield Road, provide maintenance of traffic as needed to facilitate truck and construction traffic prior to completion of the realignment, with priority to construct the geometric improvements to the intersection of River Road and Ridgefield Road as specified by MCDOT and MDSHA.
18. Prior to Use and Occupancy Certificate for the Commercial Building, the Applicant must file for abandonment of portions of Ridgefield Road and Westbard Avenue.
19. If applicable, prior to plat approval for the Manor Care site and in accordance with the Westbard Sector Plan, the Applicant must file a corrective map amendment (CMA) changing the underlying R-60 zone within the Westbard Avenue abandonment limits to be consistent with the CRT 1.0, C 0.25, R 1.0, H 45' zone associated with the Manor Care site.
20. Prior to issuance of the Use and Occupancy Certificate for the 55<sup>th</sup> townhouse unit for Site Plan 820180190, the Applicant must construct and dedicate to public use the realigned Westbard Avenue, as illustrated on the Certified Preliminary Plan. In conjunction, the Applicant must:
  - a. Meet all design standards imposed by all applicable road codes; and



- b. Secure a County Council resolution abandoning the portions of existing Westbard Avenue/ Ridgefield Road rights-of-way that are no longer needed for transportation purposes.

Private Roads

21. The Applicant must provide private roads, "Westbard Circle," "Street A," "Street B," and "Street C," 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 or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
  - a. If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel. If there are structures above or below the private Road, the record plat must clearly delineate the Private Road and include metes and bounds description of the boundaries of the Private Road.
  - b. The Private Road must be designed and constructed according to the Montgomery County Road Code Standard MC-2005.01 per the modified typical section specified by the subsequent Site Plan.
  - c. Prior to issuance of the final Use and Occupancy Certificate for the Commercial Building, 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 Road has 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, as may be modified on this Preliminary Plan or a 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.
  - d. Prior to recordation of the plat, the Applicant must submit to Staff an agreement or other legal instrument that assigns responsibility for the long-term maintenance of the Private Road. To the extent possible, the agreement must conform to the requirements set forth in the covenant recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338. The agreement must be approved by the Commission's Office of the General Counsel, recorded in the Montgomery County Land Records, and referenced on the plat.
  - e. Prior to issuance of the final Use and Occupancy Certificates for the townhouses on Lots 1-15, Block A at Westwood Shopping Center, all private streets must be completed to base course of asphalt and streetscape improvements completed on the townhouse side of the street and inspected by MCDPS.

### **Record Plats**

22. The Applicant may not perform clearing or grading of any site prior to recordation of the plat for each site.

### **Easements, Dedications, Open Space**

23. The record plat must show necessary easements and dedications.
24. The Applicant must record an easement for the Sector-Plan-recommended pedestrian connection from Westbard Avenue to the future Willett Branch Greenway on Parking Lot 1 (Lot 1, Block B).
25. The record plat must reflect all areas under common ownership.
26. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 ("Covenant").

### **Parkland**

27. The Applicant must convey in fee simple to the Maryland-National Capital Park and Planning Commission (M-NCPPC), at no cost and via plat at the same time as the first plat for Site Plan 820180190, the following areas for use as public park land for the Willett Branch Greenway, as shown on the Certified Preliminary Plan:
- i. The portion of unimproved land at Lot 2, Block H, at the existing Westwood II Shopping Center and associated parking lot; and
  - ii. The area shown as Lot 3, Block B.
  - iii. The Applicant must provide for invasive species management in dedicated areas.
28. Prior to the first record plat for Site Plan 820180190, the Applicant must record a covenant to M-NCPPC for future conveyance in fee simple of the portion of land at Lot 2, Block H, currently improved with the existing Westwood II Shopping Center and associated parking lot. The covenant must be shown on the Certified Preliminary Plan and be recorded in the land records of Montgomery County.
29. At Lot 3, Block B (Bowlmor), the Applicant must grant to M-NCPPC a 20-foot-wide parks maintenance access easement reaching the east side of the Willett Branch conveyance area for access to the Willett Branch Urban Greenway.
30. If applicable, prior to any land disturbance, the Applicant must comply with all relevant laws and regulations concerning burial sites and an inventory of burial sites and coordinate all activity relevant to these laws and regulations with Montgomery County Planning Department's Historic Preservation Section Archaeologist.

### **Certified Preliminary Plan**

31. The Applicant must include the stormwater management concept approval letter, other applicable agency letters and the Preliminary Plan Resolution on the approval or cover sheet(s).

32. 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 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.*

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

- a. Revise the Westwood Shopping Center townhouse layout to remove the double 90-degree turn in the proposed alley adjacent to townhouse lots 50-56.
- b. Create a new common ownership parcel behind townhouse lots 62-70 for stormwater management conveyance in accordance with MCDPS approved Stormwater Management Concept Plan.
- c. Revise drawings to show a common ownership parcel for stormwater management behind townhouse lots 57-61.
- d. Revise the Manor Care Category I Easement boundary on all appropriate sheets consistent with the Category I Easement shown on Sheet PP-5.
- e. Rectify inconsistencies between plan graphics/notes/ figures/tables.
- f. Modify data table to reflect development standards approved by the Planning Board.

34. Future Coordination Issues for Site Plan Review

- a. Westwood II

Future development must be designed and constructed to minimize adverse impacts on the future implementation of the Willett Branch Greenway.

- b. Manor Care

- i. Maximize plantings in and along the River Road right-of-way;
- ii. Obtain the services of a consultant specialized in stream restoration to address the details of the environmental enhancements, including:
  1. Bank stabilization/stream enhancements;
  2. Invasive control;
  3. Re/afforestation planting and planting of supplemental native species within retained forest areas within the Category I Easement area and right-of-way, as applicable;
  4. Address fences encroaching into the Category I Conservation Easement on the Manor Care site;

5. Soil restoration for restored areas; and
  6. Monitoring and maintenance.
- iii. Revised noise study updated per proposed design.

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

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

The Approved and Adopted 2016 Westbard Sector Plan (“Sector Plan” or “Plan”) envisions Westbard as a vibrant walkable village center adjacent to an enhanced Willett Branch Greenway (Sector Plan, p. 6). Toward that vision, the Sector Plan provided specific recommendations for development of the Subject Property and amenities for the entire Sector Plan area (e.g. the realignment of Westbard Avenue and establishment of the Willett Branch Greenway). Both the site-specific and Sector Plan area recommendations are incorporated in the Subject Application and discussed in more detail below.

The Site is located within the area designated by the Sector Plan as “the Westbard Avenue District.” Specific Sector Plan recommendations include transforming the existing surface parking lots into an inviting, livable, walkable village with stores and apartments and providing new open spaces. Each of the site-specific recommendations are summarized below.

#### Land Use

##### Westwood Shopping Center

For the Shopping Center site, designated Site 1, the Sector Plan envisioned a mixed-use commercial and residential redevelopment with a maximum building height of 60 feet. In support of the redevelopment on this site, the Sector Plan recommends a central civic green (measuring approximately 1/3 of an acre), a new neighborhood park, and an internal circulation network.

The Application provides a new mixed-use development with a Multi-Family Building with ground-floor retail, a new Commercial Building (expected to accommodate the new Giant supermarket), and up to 70 townhomes. The Applicant will also design and construct a new central civic green, the new Springfield Neighborhood Green Urban Park to be conveyed to M-NCPPC, and a new internal circulation system. The development on the Westwood Shopping Center site conforms to the recommendations of the Sector Plan.



#### Manor Care

For this site, identified as Site 2, the Sector Plan recommends residential townhouse development, limited to 45 feet in height, with commercial uses on this site strongly discouraged. The development of this site is significantly enlarged by the Sector-Plan-recommended realignment of Westbard Avenue and its intersection with Ridgefield Road, discussed below, and the site layout reflects this major public improvement. The Sector Plan also provides specific restrictions on the location of the townhouses, including behind the existing single-family homes and limiting encroachment into the Stream Valley Buffer around the Kenwood Tributary, except where removal of existing paved areas is necessary to mitigate and replant the northerly strip along River Road. As conditioned, the development conforms to these recommendations for the purposes of Preliminary Plan review. Development on this site will be the subject of a future Site Plan application and conformance with the Sector Plan will be reevaluated at that time. The Sector Plan (p. 73) also identifies the possibility for a Corrective Map Amendment that would involve the Manor Care site combined with the road abandonment.

#### Westwood II

For this site, identified as Site 3, the Sector Plan recommends a mixed-use development with a maximum building height of 75 feet coupled with the naturalization of the Willett Branch, which runs through the northern portion of the Subject Property. This site is also significantly impacted by the recommended realignment of Westbard Avenue and Ridgefield Road. The reduced site is reflected on the Preliminary Plan and as conditioned at this stage conforms to the recommendations of the Sector Plan. Development on this site will be the subject of a future Site Plan application and will be re-evaluated then.

#### Transportation Network

As a major improvement to the circulation system of the Sector Plan Area, the Sector Plan recommends the realignment of Westbard Avenue (Street B-1), and its intersection with Ridgefield Road. As part of the Subject Application, in coordination with County and State transportation agencies, the Applicant will construct the realigned Westbard Avenue. Additionally, the Applicant will implement Sector-Plan-recommended streetscape improvements along Westbard Avenue to improve the safety and comfort of all roadway users. As conditioned, the Applicant will provide the necessary improvements to the transportation network and satisfies the Sector Plan recommendations.

#### Open Space and Environment

As discussed above, the Public Open Spaces are consistent with the Sector Plan recommendations. Specific discussion of each of these elements is discussed below:

- **Central Civic Green:** The Sector Plan recommends a new Central Civic Green, measuring between one-half acre and one-third acre, to be located on the Westwood Shopping Center site. The Sector Plan envisions this Public Open Space as a gathering place supported by amenities necessary to make the space an appealing destination for the entire community.
- **Springfield Neighborhood Green Urban Park:** The Sector Plan recommends a new neighborhood park, measuring between one-half acre and one-third acre, at the intersection of Ridgefield Road and Westbard Avenue. Although this space is envisioned as a buffer between the Westwood Shopping Center site and adjacent Springfield Neighborhood, the Sector Plan specifically recommends that it be programmed to serve both workers from the Westbard Avenue District and residents from the neighborhood and designed for more activity than an urban buffer park.
- **Willett Branch Greenway:** The Sector Plan envisions rehabilitation of the Willett Branch to improve both its ecology and community benefit. Toward this goal, the Sector Plan recommends that the Willett Branch be buffered from development, naturalized, and improved with environmentally sensitive public amenities.

As conditioned, the open spaces and Willett Branch accommodations satisfy the Sector Plan recommendations.

### Housing

The Sector Plan places a high priority on the provision of new affordable housing for Optional Method development. Since the development is under the Standard Method, this recommendation does not strictly apply. However, with over 500 new dwelling units, the development will provide 63 total new MPDUs in both the multi-family and townhouse units.

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

As a Preliminary Plan application accepted on December 20, 2016, The Application was reviewed under the Subdivision Regulations in effect prior to February 13, 2017, and the 2012 – 2016 Subdivision Staging Policy (SSP). For this reason, technical evaluation of the intersection capacity is based on the Critical Lane Volume (CLV) methodology and is limited to vehicular impacts rather than the Highway Capacity Manual (HCM) methodology and multi-modal analysis associated with the current 2016-2020 SSP.

The Applicant submitted a transportation study, dated June 14, 2018, estimating the development's impact to the transportation network. Based on that analysis, sufficient intersection capacity exists to serve the Project. The Applicant will implement interim improvements to improve existing transportation issues on Westbard Avenue and will implement the Westbard Avenue Realignment, which is anticipated to improve traffic flow in the immediate vicinity of the project.

### School Adequacy Analysis

#### **Overview and Applicable School Test**

Preliminary Plan 120170170, Westwood Shopping Center, is subject to the FY19 Annual School Test, approved by the Planning Board on June 21, 2018 and effective July 1, 2018. The Application includes 410 multifamily high-rise dwelling units and 106<sup>2</sup> single family attached dwelling units on land with no dwelling units currently.

#### **Calculation of Student Generation**

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

Per Unit Student Generation Rates – Southwest Region

	<b>Elementary School</b>	<b>Middle School</b>	<b>High School</b>
<b>SF Detached</b>	0.193	0.111	0.147
<b>SF Attached</b>	0.191	0.094	0.124
<b>MF Low- to Mid-Rise</b>	0.146	0.063	0.083
<b>MF High-Rise</b>	0.055	0.022	0.031

With a net of 410 new multifamily high-rise dwelling units and 106 new single family attached dwelling units, the project is estimated to generate the following number of students:

<sup>2</sup> School capacity analysis tested for 106 SF Attached, however the latest submitted plans include 104 SF Attached.

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
<b>SF Attached</b>	106	0.191	20.246	0.094	9.964	0.124	13.144
<b>MF High-rise</b>	410	0.055	22.550	0.022	9.020	0.031	12.710
<b>TOTAL</b>	<b>516</b>		<b>42</b>		<b>18</b>		<b>25</b>

This project is estimated to generate 42 new elementary school students, 18 new middle school students, and 25 new high school students.

#### Cluster Adequacy Test

The project is located in the Walt Whitman High School Cluster. The student enrollment and capacity projections from the FY19 Annual School Test for the Whitman Cluster are noted in the following table:

School Level	Projected Cluster Totals, September 2023			Moratorium Enrollment Threshold	Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	2,410	2,539	94.9%	3,047	2,452
Middle	1,336	1,502	88.9%	1,803	1,354
High	2,129	2,397	88.8%	2,877	2,154

The Moratorium Enrollment Threshold identified in the table is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. As indicated in the last column, the projected enrollment plus the estimated impact of this Application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

#### Individual School Adequacy Test

The applicable elementary and middle schools for this project are Wood Acres ES and Thomas W. Pyle MS, respectively. Based on the FY19 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:



School	Projected School Totals, September 2023				Moratorium Enrollment Thresholds		Projected Enrollment + Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus / Deficit	120% Utilization	Surplus / Deficit	
Wood Acres ES	641	725	88.4%	+84	871	835	683
Pyle MS	1,336	1,502	88.9%	+166	1,803	1,682	1,354

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

The Moratorium Enrollment Thresholds identified in the table above are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. As indicated in the last column, the projected enrollment plus the estimated impact of this application falls below both applicable moratorium thresholds for both Wood Acres ES and Pyle MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

#### **School Capacity Analysis Conclusion**

Based on the school cluster and individual school capacity analysis performed, using the FY2019 Annual School Test, there is adequate school capacity for the amount and type of development included in this application.

#### **Other Public Facilities**

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

#### **Adequate Public Facility Validity Period**

In accordance with Section 50-20(c)(3)(B) of the Subdivision Code, the Applicant requested a validity period longer than the minimum specified in the Code. That request set forth a detailed phasing plan demonstrating when each phase of

development would be completed. As conditioned, the Adequate Public Facility review for the Preliminary Plan will remain valid for one hundred twenty (120) months, phased in the following manner:

1. First Phase - 36 months from the 30th day after the Resolution is mailed; or if an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.
  2. Second Phase - 36 months from the expiration date of the validity period for First Phase.
  3. Third Phase- 24 months from the expiration date of the validity period for Second Phase.
  4. Fourth Phase - 24 months from the expiration date of the validity period for Third Phase.
3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The size, width, shape, and orientation of the lots is appropriate for the location of the subdivision taking into account the recommendations included in the Sector Plan, and for the type of development or uses contemplated. The Application complies with the land use recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the Subject Property is sufficiently large to efficiently accommodate the mix of uses. Under Section 59.4.5.4 of the Zoning Ordinance, the dimensional standards for the lot will be determined with approval of the subsequent Site Plans.

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

A. Forest Conservation

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

The entire site is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). A Preliminary Forest Conservation Plan (PFCP) has been submitted for the all the properties under ownership of the Applicant in the Westbard area and a Final Forest Conservation Plan (FFCP) has been included for the Westwood Shopping Center site. As typical with other phased projects, the forest conservation requirements for any particular phase must be satisfied before any clearing or grading occurs within that phase. The afforestation requirements will be satisfied in part by the establishment of an onsite

Category I Easement at the Manor Care site and also by the purchase of equivalent credits in an offsite forest conservation bank.

## B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to ten (10) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

Table 7: VARIANCE TREES AS PROPOSED FOR REMOVAL

Tree #	Scientific Name/ Common Name	D.B.H (inches)	Field Condition	CRZ Impacts (%)	Disposition
12	<i>Quercus palustris</i> /pin oak	38	Good	N/A	Removal
13	<i>Quercus palustris</i> /pin oak	30	Fair/Poor	N/A	Removal
14	<i>Quercus palustris</i> /pin oak	30	Poor	N/A	Removal
37	<i>Quercus palustris</i> /pin oak	34	Good	N/A	Removal
1014	<i>Prunus serotina</i> /black cherry	40	Fair	N/A	Removal
1006	<i>Robina psuedocacia</i> / black locust	30	Fair	N/A	Removal

Table 8: VARIANCE TREES AS PROPOSED FOR IMPACT

Tree #	Scientific Name/ Common Name	D.B.H (inches)	Field Condition	CRZ Impacts (%)	Disposition
3	<i>Quercus palustris</i> /pin oak	31	Good	25.2	Save
4	<i>Quercus palustris</i> /pin oak	30	Good	30.1	Save
22	<i>Quercus palustris</i> /pin oak	36	Good	4.3	Save
1018	<i>Robina psuedocacia</i> / black locust	30	Fair	23.2	Save

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.*

Most of the removals are for subject trees in the ROW and their retention would otherwise preclude the Sector-planned ROW modifications. Furthermore, the impacts to tree 1018 are needed to implement an environmental enhancement project which is also recommended by the Sector Plan. Therefore, the variance request would be granted to any Applicant in a similar situation.

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

The requested variance is based on development allowed under the existing zoning and recommended by the Sector Plans. The variance can be granted under this finding if the impacts are avoided or minimized and that any necessary mitigation is provided as conditioned.

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 generally a result of the implementation of the Sector Plan recommendations 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.*

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The subject area currently contains widespread areas of impervious surfaces with no known SWM facilities. The redevelopment will include green roofs and other formal SWM treatments in addition to environmental enhancements within the SVB at the Manor Care site (such as the removal of a linear parking lot and replacement with forest plantings in addition to stream bank stabilization work). Other water quality aspects of the project include dedication of land for the Willett Branch Greenway which will ultimately remove the existing concrete channel as part of the overall for stream naturalization. The DPS review and approval of the sediment and erosion control and stormwater management plans will help ensure that appropriate standards are met.



Additionally, the variance mitigation plantings will contribute to the water quality goals.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1" DBH for every 4" DBH removed. No mitigation is required for Protected Trees impacted but retained.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on February 27, 2019. As the Applicant proceeds with future development of the properties covered by this Preliminary Plan, DPS will be reviewing updated stormwater concept plans at the time of Site Plan.

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 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 06 2019 (which is the date that this Resolution is mailed to all parties of record); and

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

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board