



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

APR 13 2021

MCPB No. 21-031
Preliminary Plan No. 120210050
MGCDC-CentroNia (Martha B. Gudelsky Child Development Center)
Date of Hearing: March 25, 2021

RESOLUTION

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

WHEREAS, on May 22, 2020, Martha B. Gudelsky Child Development Center, Inc. ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.2 acres of land in the R-60 zone, located 8901 and 8907 Colesville Road in Silver Spring ("Subject Property"), in the Silver Spring/Takoma Park Policy Area and 2000 *North and West Silver Spring Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120210050, MGCDC-CentroNia (Martha B. Gudelsky Child Development Center ("Preliminary Plan" or "Application")); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 15, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 25, 2021, 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 25, 2021 the Planning Board voted to approve the Application subject to certain conditions, on motion of Vice-Chair Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Chair Anderson, Commissioner Cichy, Vice-Chair Fani-Gonzalez, and Commissioner Verma voting in favor, with Commissioner Patterson absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210050 to create one lot on the Subject Property, subject to the following conditions:¹

General Approval

1. This Preliminary Plan is limited to 1 lot for up to 31,000 square feet of gross floor area for a Group Day Care, a maximum of 180 children at any one time and maximum of 60 staff persons at any one time.
2. The Applicant must comply with the conditions of approval enumerated in the November 24, 2020 Notification of Decision letter from the Board of Appeals approving Conditional Use No. CU202008.
 - a. As stated in Conditional Use Condition 12, the Applicant must widen the existing sidewalk where necessary along the Colesville Road frontage to achieve a minimum width of five feet, without removal or relocation of the existing utility pole.

Adequate Public Facilities and Outside Agencies

3. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.
4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in their letters dated August 31, 2020 and March 3, 2021 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated August 21, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

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

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 has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated February 16, 2021 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.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated February 26, 2021 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Forest Conservation

10. The Applicant must comply with the October 6, 2020 conditions of approval for the Preliminary Forest Conservation Plan CU202008, approved in association with this Preliminary Plan.
11. The Applicant must revise the Final Forest Conservation Plan/Tree Save Plan to incorporate the following items:
 - a. In coordination with the Montgomery County Department of Permitting Services (MCDPS), the Applicant must specify and implement sediment control measures which also meet the tree protection goals as specified on the Tree Save Plan (such as untrenched filter logs).
 - b. No trenching shall be allowed within the Critical Root Zone (CRZ) of Tree-8 with exception for trenching associated with the waterline and minor portions of the retaining wall as shown on the Tree Save Plan.
 - c. If MCDPS ultimately requires implementation of a trenched sediment control method within the otherwise protected portions of Tree-8's CRZ, the Forest Conservation Plan must be amended to address the resulting tree impacts prior to conducting the associated work.
12. Prior to demolition or any land disturbing activities occurring, the Applicant must meet and coordinate onsite with M-NCPPC Staff and other applicable agencies, such as MC-DOT and SHA, in order to:
 - a. Discuss and finalize the phasing of construction activities near trees including, but not limited to, Trees 8, 12, and 25;

- b. Assess and make any recommended adjustments to tree protection and construction access measures for Tree-8;
 - c. Following this coordination, if it is determined that Tree-12 is to be removed, the Applicant must obtain approval of a revised variance request for the removal prior to conducting the associated work.
13. The Applicant must update the Forest Conservation Plan and associated Forest Conservation Worksheet to fully reflect the offsite Limits of Disturbance ("LOD").
 14. Prior to demolition or any land disturbing activities occurring onsite the Applicant must receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off-site forest mitigation bank, or payment via fee-in-lieu, for an afforestation equivalent credit of 0.34-acres (or as determined on the Certified Final Forest Conservation Plan).
 15. Prior to Certification Final Forest Conservation Plan the Applicant must coordinate with Staff on clarifications, corrections and updates for the plan phasing, notes, details, graphics, and specifications and update all applicable drawings for consistency across plan sheets.
 16. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
 17. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 18. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.

Transportation

19. Prior to any above ground building permit the Applicant must dedicate right-of-way necessary to provide 60 feet from the right-of-way centerline along the Site's Colesville Road frontage.
20. Prior to the issuance of the final Use and Occupancy Certificate, the Applicant must install five-foot wide sidewalks along the Ellsworth Drive frontage.

Record Plats

21. There shall be no clearing or grading of the site prior to Certification of the Final Forest Conservation Plan and the Preliminary Plan.

Easements

22. The record plat must show necessary easements.

Department of Parks Conditions

23. During the hours the Park is open the Applicant must provide limited access for Park patrons to 12 individually signed parking spaces along the northern-most row of parking spaces. Individual signs shall must read "Parking Reserved Exclusively for Park Patrons during Park open hours EXCEPT Monday-Friday 8:00 am to 10:00 am and 4:00 pm to 6:00 pm for MGCDC drop-off and pick-up." Clarifying signage at the entrance of the parking lot at Ellsworth Drive must also be provided indicating "Limited Courtesy Parking for Park Patrons, 3-hour limit during Park open hours, by authority of M-NCPPC at the northern end of the CentroNia/MGCDC Parking Lot adjacent to Ellsworth Urban Park. Monitoring and enforcement by Montgomery County Park Police." Implementation and acceptance by the Department of Parks must be accomplished prior to release of building permit. The parking agreement and associated signage may be revised from time to time, through mutual agreement between the Applicant and Department of Parks as long as it doesn't contradict the terms of approval of Condition Use No. CU202008.
24. After the issuance of Applicant's use and occupancy permit, the Applicant must ensure patron and maintenance access to the southwest corner of Ellsworth Urban Park adjacent to the dog park, and all formalized park entrances.

Certified Preliminary Plan

25. The Applicant must include the Conditional Use approval, stormwater management concept approval letter, other applicable agency letters and Preliminary Plan Resolution on the approval or cover sheet(s).
26. The certified Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.
27. Prior to the submittal of the certified Preliminary Plan the Applicant will coordinate with Staff on minor clarifications, corrections and updates for the plan notes and graphics and update all applicable drawings for consistency across plan sheets.

28. The Applicant and Staff from the Planning Department, Parks Department, and other reviewing agencies will work in good faith to resolve any questions or conflicts arising during the implementation phase of this project.

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

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations including the technical review standards in Section 50.4.3. The Application meets all applicable sections. The size, width, shape and orientation of the lot is 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 Application substantially conforms to the 2000 *North and West Silver Spring Master Plan*, as discussed further in Finding 2. The Application complies with the land use recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Master Plan. This Preliminary Plan creates one lot. Transportation access is adequate to serve the development by this Preliminary Plan. Water and sewer and other utilities are available to and currently serve the Property. As conditioned the Application meets the Environmental Guidelines and Forest Conservation Law.

The lot was reviewed for compliance with the dimensional requirements for the R-60 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in following table. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan.

R-60 Development Standards- Section 59.4.4.9.B

Section	Development Standard	Required/ Permitted	Approved
59.4.4.9.B.1	Minimum Lot Area	6,000 square feet	91,755 square feet (after dedication)
59.4.4.9.B.1	Min Lot Width at Front Building Line Colesville Road Ellsworth Road	60 feet 60 feet	188 feet 359 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line Colesville Road Ellsworth Road	25 feet 25 feet	188 feet 359 feet
59.4.4.9.B.1	Maximum Density (units/acre)	7.26 units	N/A
59.4.4.9.B.1	Maximum Lot Coverage	35% (32,114 SF)	20 % (18,351 SF)
59.4.4.9.B.2	Minimum Front Setback Colesville Road Ellsworth Road	25 feet 25 feet	46 feet 90 feet
59.4.4.9.B.2	Minimum Side Setback	8 feet	13 feet
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 feet	55 feet
59.4.4.9.B.2	Minimum Rear Setback	20 feet	See Front Setback Above
59.4.4.9.B.3	Maximum Height	35 feet	35 feet

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

The Site is located within the area encompassed by the 2000 *North and West Silver Spring Master Plan* (Master Plan). Although the Master Plan does not specifically discuss this Property, there are specific recommendations regarding the review of Conditional Uses (then called “Special Exceptions”), particularly on “highly visible sites” like the Subject Property. For such sites, the visibility of parking areas, signage, and lighting should be minimized and the use of a residential style of architecture is desirable. Traffic generated by the use should be minimized as well (p. 42-44). Master Plan recommendations pertaining to Conditional Uses were evaluated by the Planning Board as part of Conditional Use No. CU202008 and found to be in substantial conformance with the Master Plan.

The former library building and the accompanying addition have a one- to two-story residential scale. The addition extends the craftsman/sonian

architectural character of the original building, with stone and brick walls, floor-to-ceiling windows, and deep hipped-roof overhangs.

The landscape and lighting design will remain in keeping with the existing character of the site, with new screening for the parking lot, which will be reconfigured internally to accommodate the addition, and not expanded. The Application provides one sign near the main site entrance on Colesville Road, which is the opposite side of the site from the neighborhood to the east.

The Applicant has designed the site circulation to retain a minimal traffic impact on the adjacent single-family neighborhood across Ellsworth Drive.

The Master Plan also recommends “*community facilities to meet the human service, recreation, security, educational, and other needs of the diverse community*” (p. 4). The Group Day Care facility will provide a much-needed use for Montgomery County residents, including residents and workers in the nearby Central Business District and surrounding neighborhoods.

a. Land Use

The 2000 *North and West Silver Spring Master Plan* proposed land use map (page 19) identifies the property as recommended parkland and includes a general recommendation to consider converting local government facility sites, once they are declared surplus by the County, to parks as a means to meet the active recreational needs identified in the PROS Plan. Although the Department of General Services completed a reuse analysis for the Property and concluded that the Property was no longer needed for a public use, it was determined by the County that the use of the property for an early childhood development center, with an emphasis on services and programs for low-income working families, would better suit the County’s needs. Therefore, an exclusive park use is not viable, however as previously stated, the application provides a minimum of 12 assigned parking spaces to be made available for use by patrons of the adjacent Ellsworth Urban Park.

b. Environment

The *North and West Silver Spring Master Plan* includes overlapping recommendations regarding environmental enhancements:

- Enhance the natural environment by creating green spaces and identifying locations for improved street tree planting (pages 91 & 92).
- Improve permeability of surface parking areas with green space (page 95).
- General recommendations for buffering/screening of parking and

applying urban forestry practices which includes the use of native species and removal of existing invasive species.

- Promote the use of areas designed to increase infiltration within required open or green space by use of alternative paving, soil conditioning and other techniques (page 94).
- Apply stormwater management opportunities during redevelopment (page 93).
- Incorporate recycling and energy efficiency programs and standards in the design of new development, and where possible, into renovations (page 93).

The environmental recommendations of the Master Plan have been addressed by the Application, as conditioned. The project will provide for new street trees along the Ellsworth frontage, include new landscaping which will enhance the screening over the existing conditions. Furthermore, the project will adaptively re-use the existing building and include energy efficient retrofits and features within the existing building footprint/addition. The redevelopment will also provide stormwater management facilities onsite whereas none are known to currently exist within the property.

c. Transportation

The Applicant must dedicate right-of-way necessary to provide a minimum of 60 feet, as measured from the right-of-way centerline, along the Site's Colesville Road frontage to achieve the total master-planned right-of-way width of 120 feet. The Applicant must also improve the sidewalks on both the Ellsworth Drive and Colesville Road frontages to achieve a minimum sidewalk width of 5-feet.

The Preliminary Plan substantially conforms to the recommendations within the *2000 North and West Silver Spring Master Plan*.

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

a. Roads and Other Transportation Facilities

i. *Existing Facilities*

Master Planned Roadways and Bikeways

Colesville Road is owned and maintained by the Maryland Department of Transportation State Highway Administration (MDOT SHA). It is classified as a Major Highway with a master-planned right-of-way of 120 feet and a posted speed limit of 35 MPH. The Applicant is providing a minimum of

sixty feet of right-of-way dedication, as measured from the right-of-way centerline, along the Site's frontage. No bikeways are master planned along Colesville Road.

Ellsworth Drive is owned and maintained by the Montgomery County Department of Transportation (MCDOT). It is classified a secondary residential roadway and per Section 49 of the County Code, the minimum standard right-of-way width is 70 feet. No additional right-of-way dedication is required by the Applicant because sufficient right-of-way exists along the Site Frontage. The 2018 *Bicycle Master Plan* recommends a neighborhood greenway bicycle facility on Ellsworth Drive, which is a shared road facility. The existing configuration of the roadway will allow for future implementation of neighborhood greenway and continued functionality as a secondary residential roadway without further modification on behalf of the Applicant.

Transit Service

The Site is located just under a half-mile from the Silver Spring Transit Center, which is served by Metrorail's Red line, the future MDOT MTA Purple Line, the MARC Commuter Rail, and over 25 regional and local bus lines.

Two bus stops are located within the vicinity of the site. At the southwest corner of the Site on Colesville Road is a bus stop served by RideOn routes 8, 9, 13, 14, 21, 22, and Metrobus route Z8. A block south of the Site, at the corner of Ellsworth Drive and Spring Street is a bus stop served by RideOn route 12.

Sidewalks

Sidewalks are present on the Site's frontages on Colesville Road and Ellsworth Drive, but they are substandard in width. Along Colesville Road the sidewalks are four feet in width and have no buffer from the adjacent roadway. On Ellsworth Drive four-foot sidewalks are present with a variable width grass buffer along the Site frontage. As conditioned, the Applicant will replace the existing four-foot wide sidewalks with five-foot wide sidewalks along both frontages and retain a variable width vegetated buffer, along the Ellsworth Drive frontage.

ii. Proposed public transportation infrastructure

The Applicant must dedicate right-of-way necessary to provide 60 feet from the right-of-way centerline along the Site's Colesville Road frontage to achieve the total master-planned width of 120 feet. The Applicant is also improving the sidewalks on the Ellsworth Drive and Colesville Road to achieve a minimum width of 5-feet.

b. Local Area Transportation Review (LATR)

The Group Daycare Facility will have an enrollment of up to 180 children and up to 60 staff. As such, the Site is expected to generate more than 50 peak-hour person trips, and a traffic study was completed in accordance with the *2016-2020 Subdivision Staging Policy* and the *2017 Local Area Transportation Review (LATR)* guidelines. The Site is not expected to generate more than 50 peak-hour pedestrian, bicycle, or transit trips, and is therefore exempt from adequacy tests associated with those modes of transportation.

Vehicle Adequacy

The Applicant evaluated a total of eight intersections, including the site driveway, in proximity to the Site. In accordance with the *2016-2020 Subdivision Staging Policy*, the intersections were evaluated using the Highway Capacity Manual (HCM) methodology. A map of the intersections studied are shown in Figure 7 of the Staff Report.

The Site is in the Silver Spring/Takoma Park Policy Area, which is designated as an Orange Policy Area by the *2016- 2020 Subdivision Staging Policy*. Traffic congestion in Orange Policy Areas is measured using Highway Capacity Manual (HCM) delay-based level of service standards, which applies to all signalized study intersections. The HCM average vehicle delay standard for the Silver Spring/Takoma Park Policy Area is 80 seconds. The HCM vehicle delay standard is currently exceeded at the intersection of Colesville Road and Dale Drive during the morning peak period. For the morning peak period, the delay for existing conditions is 119 seconds/vehicle, 165 seconds/vehicle when accounting for background conditions, and 167 seconds/vehicle for the total future conditions, including the enrollment for the Project. Trips generated by the day care results in an increase of two seconds of delay during the morning peak period at the Colesville Road/Dale Drive intersection.

The Applicant worked closely with MDOT SHA and MCDOT to determine the Site's traffic impact to the intersection of Colesville Road and Dale Drive and identify acceptable mitigation strategies. The selected mitigation strategy significantly decreases average vehicle delay at the intersection but does not undermine with Countywide transportation safety initiatives such as Vision Zero.

The Applicant submitted a Design Request for a traffic signal modification to MDOT SHA for the intersection of Colesville Road and Dale Drive. That Design Request sought to better facilitate Site generated turning movements at the Colesville Road and Dale Drive intersection. The signal modification

would significantly reduce congestion at the intersection during the morning peak hour bringing the estimated average vehicle delay from 167 seconds down to 87 seconds. While this does not bring the average vehicle delay back within the 80 second congestion standard for the Orange Policy Area, it cuts the delay by nearly 50 percent and more than compensates for the additional two seconds of delay incurred by Site generated trips. Recognizing that the intersection exceeds the delay in the existing condition, this strategy was accepted by MDOT SHA, MCDOT, and Planning staff.

The Applicant was directed by MDOT SHA to study the potential impacts of the requested signal modification on queuing lengths at the intersections immediately upstream and downstream of the modified signal at Colesville Road and Dale Drive. The outcome of that analysis showed queuing lengths at these intersections to be acceptable with the signal modifications and was therefore approved by MDOT SHA and MCDOT. Therefore, the Planning Department and MCDOT require the Applicant to participate in the signal redesign, by making a payment of \$1,350 to CIP 507154 for the optimization of the split-phase of this traffic signal. The payment will be made to MCDOT prior to issuance of the right-of-way permit.

As an additional measure to reduce the impact on Colesville Road, Ellsworth Drive and the nearby intersections, the Applicant will stagger arrivals and dismissals, drop-off and pick-ups between 7:00 a.m. and 10:00 a.m. and 4:00 p.m. to 6:00 p.m. are limited to 70 vehicles in any one hour. The Applicant must maintain records of the number of vehicles and children dropped off during each hour. The Applicant must make these records available to the Department of Permitting Services upon request.

Motorists accessing the Site will be required to park and enter the building when dropping off or picking up their children. While it is expected that a significant number of patrons will access the Site by walking or transit, staggering the drop-off and pick-up times will further reduce the need for excess parking spaces and will eliminate queuing within and off the site. The Applicant will clearly communicate and enforce the designated pick-up and drop-off times for each student.

c. Other Public Facilities and Services

The Applicant has approval for up to 180 children under the approved Conditional Use. As such, the Site is expected to generate 165 net new peak-hour person trips (105 net new vehicle peak-hour trips), and therefore a traffic study was completed in August 2020 to comply with the 2017 Local Area Transportation Review (LATR) guidelines. It was determined that trips generated by the day care results in an increase of two seconds of delay during the morning peak period at the Colesville Road/Dale Drive

intersection. To mitigate the impact of the trips generated by the Project, the Applicant proposed to optimize the signal at Colesville Road and Dale Drive. The proposed changes to the signal timing were reviewed and approved by MCDOT. Therefore, the Planning Department and MCDOT require the Applicant to participate in the signal redesign, by making a payment of \$1,350 to CIP 507154 for the optimization of the split-phase of the traffic signal. The payment will be made to MCDOT prior to issuance of the right-of-way permit.

Public facilities and services are available and will be adequate to serve the development. The 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 Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

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

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

A. Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Subject Property on April 17, 2020. The Subject Property is located within the Sligo Creek watershed, a Use I watershed², which is also a tributary to Anacostia River. The main stem of Sligo Creek lies about 2,500 feet north of the site. The Property, which consists of Parcel P933 to the North and Parcel P959 to the South, contains mature trees subject to the Variance provision of the Forest Conservation law, including specimen trees which measure 30-inches or greater in diameter-at-breast height (DBH). The northern portion of the site is bordered on three sides by pockets of man-made steep slopes having gradients of 25% or greater as well as slopes of 15-25% gradients. Soils on the property are largely 2B Glenelg silt loam and soil defined as Urban land; neither soil type is considered to be highly erodible or hydric.

² Use I:

WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

There are no known rare, threatened, or endangered species on site; there are no 100-year floodplains, stream buffers, or wetlands on site. Other than the watershed itself and mature specimen trees, there are generally no environmentally sensitive resources associated with the Subject Property.

B. Forest Conservation Plan

Although there is no forest on-site, this Application is subject to Chapter 22A Forest Conservation Law. A Preliminary Forest Conservation Plan for this Application was previously reviewed and approved with conditions by the Planning Board Resolution No. 20-095 mailed on October 6, 2020 which was reviewed as part of the related Condition Use Application No. CU202008. The previously approved Preliminary Forest Conservation Plan showed a calculated Afforestation Requirement of 0.33-acres. The currently submitted Final Forest Conservation plan now incorporates additional offsite improvements for the sidewalk along Ellsworth Drive; as a result of this new work and expanded LOD, the net tract area for the project has increased by approximately 0.05-acres, which also increases the forest conservation requirements from 0.33 to 0.34-acres. As conditioned, the current plan still meets all applicable Chapter 22A Forest Conservation Law requirements. The Planning Board upholds the previous recommendation for this Forest Conservation requirements to be met through credits purchased from an off-site Forest Conservation Bank; however, due to recent/ongoing changes in the Forest Conservation Law, the Final Forest Conservation Plan will include a provision to allow the requirements to be met by fee-in-lieu if the applicable credits from a Forest Conservation Bank are not available.

Although the Applicant will retain the existing building currently onsite, the overall work and site modifications will have impacts on specimen trees, which triggered the need for a Variance Request and Tree Save Plan for impacts to subject trees. The approved Preliminary Forest Conservation Plan included a condition of approval for the Final Forest Conservation Plan to be submitted along with a Tree Save Plan prepared by an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert. Accordingly, the Applicant has provided a Tree Save Plan to Staff on March 5, 2021 along with the Final Forest Conservation Plan and updated variance request.

C. Forest Conservation Tree Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section

22A-21 of the County Forest Conservation Law. The Law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75% of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The previously approved variance request, reviewed as part of the Conditional Use Application for this site, found that there would be an unwarranted hardship in requiring no impact to all subject trees and thus approved the impact to, but retention of, four subject trees. With this Preliminary Plan submittal, an updated Variance Request has been submitted to reflect the impact associated design changes and the addition of sidewalk improvements which result in an updated LOD. The Planning Board's previous approval of tree impacts remains valid, however approval for new/additional impacts to Subject Trees is required.

Changes in this updated variance request include the addition of Tree-1, which was previously not proposed to be impacted, Tree-6 now has a slightly increased level of impact proposed, and Tree 8 maintains the same numerical level of proposed impact, however specialized construction techniques have been proposed for stress reduction measures. Additionally, Tree-12 now has significantly increased impact as a result of the offsite sidewalk improvements as conditioned by the approved Conditional Use Application. Details of new impacts to Subject Trees are shown graphically in Figure 8 and listed in Table below.

New Impacts to Subject Trees

TREE #	TYPE	DBH	CRZ Impacts as shown on PFCP	CRZ Impacts as shown on FFCP	CONDITION	PROPOSED STATUS
1	Siberian Elm	37"	n/a*	2.7%	Good	SAVE
6	Red Mulberry	34"	11.1%	15.1%	Poor	SAVE
12	Tree of Heaven	31"	5.7%	22.8%	Good	SAVE

*Previously not affected on Preliminary Forest Conservation Plan.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, the Planning Board has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship due to a number of distinct, yet related reasons. The mature trees existing onsite are associated with an older defunct facility in need of repurposing; the impacts to the subject trees are due to construction and demolition activities for this redevelopment and

are unavoidable if this building and site are to be refitted for future use. The layout, as conditioned, has been established to minimize CRZ impacts to existing specimen trees by utilizing specialized construction techniques, minimizing limits of disturbance as feasible and implementing a five-year maintenance and management plan for the tree which is most impacted (Tree #8). Particular to Tree-8, Staff worked with the Applicant to ensure that work near this impacted tree is carefully conducted. Specifically, through the use of helical piers for structural support of the retaining wall, conducting minor grading by hand where feasible, and implementing MCDPS approved trenchless measures for sediment control, the Applicant has taken steps to ensure that this tree is properly protected; this would also have the added benefit of providing protection to other neighboring trees on the park property. The Planning Board supports this direction and Staff will continue to coordinate with the Applicant regarding non-invasive methods of sediment control acceptable to MCDPS, who must approve all measures for sediment control³.

In addition to the impacts to Tree-8, discussed above, the variance request addresses new impacts associated with sidewalk improvements per conditions of approval for this Property's Conditional Use Application. Therefore, development of the Property requires the additional impacts to subject trees.

The Planning Board has reviewed this Application and based on the existing circumstances and conditions on the Property, finds that there would be an unwarranted hardship if a variance were not granted.

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

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

The Applicant's proposal to reuse and expand the existing building onsite greatly reduces the impacts that would otherwise occur if the Applicant proposed demolition of the existing building and construction of a completely new building and infrastructure. Further, the Applicant's proposal will provide a use cited by the Master Plan as fulfilling a need for this community. Additionally, the new impacts are associated with sidewalk improvements which are a condition of approval for this

³ As submitted, the Tree Save Plan relies on trenchless methods for sediment control, which have been approved in the past by MCDPS under certain circumstances. However, if MCDPS does not ultimately approve the trenchless methods as shown in the Tree Save Plan, the Applicant will need an FFCP amendment to address the resulting tree impacts. In response to this concern, MCDPS has recommended that, prior to submission of detailed sediment control plans, a meeting be held to discuss the sediment control design in this area of the project.

Property's Conditional Use Application. With these factors considered, the Planning Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

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

As stated above, the requested variance and associated tree impacts are due to the programmatic concerns and conditions of approval related to the improvement of the site and existing building which are essential to the rejuvenation of the existing structures included in the development. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees which provide shade and buffering from adjacent uses. Without this flexibility in the design and construction, far greater subject tree impacts would be expected. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

- 3. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

- 4. Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Subject Property does not currently contain any stormwater management features. The development will meet current State and local stormwater management standards; A measurable degradation in water quality is not anticipated as the development will maintain many mature trees onsite as well as provide additional tree plantings and landscaped areas; the inclusion of tree plantings and landscaped areas will help maximize the permeability of the soil, which will aid in reducing runoff and water uptake via evapotranspiration. Further, the Applicant will provide Best Management Practices (BMP) in the form of micro-bioretenion planter boxes in effort to meet ESD requirements for the site in order to achieve water quality standards. A partial waiver of stormwater management treatment of runoff volume, due to site limitations, has been granted by MCDPS. Although a partial waiver has been granted, it is important to note that this Application contains limited

additional impervious surfaces, as the building addition falls mainly on the existing parking lot. This development will also provide stormwater management on-site, where there are currently no such measures. The application will ultimately result in an improvement of water quality, rather than cause measurable degradation. Approval for this development's Conceptual Stormwater Management Plan was granted on February 16, 2021.

Mitigation for Trees Subject to the Variance

The Planning Board does not recommend mitigation plantings for variance trees that are retained and not overly impacted.

Recommendation on the Variance

As a result of the above findings, the Planning Board approves the Applicant's updated request for a variance from the Forest Conservation Law for new impacts to, but retention of, three subject trees associated with the application. There are no subject tree removals approved under this application.

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

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on February 16, 2021. There are no known stormwater management facilities existing on the Property. The Application will meet stormwater management goals through a variety of techniques including micro-bioretenion planter boxes to treat stormwater runoff. A partial waiver for the remaining stormwater management treatment was granted with the concept approval. A detailed stormwater management review will occur at the time of detailed plan review and all facilities will be designed using the latest MCDPS guidelines.

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

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

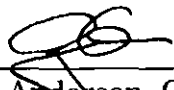
APR 13 2021 (which is the date that this Resolution is mailed to all parties of record); and

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 Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson abstaining at its regular meeting held on Thursday, April 8, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board