



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

MCPB No. 21-044
Preliminary Plan No. 120210060
King Souder Property
Date of Hearing: June 3, 2021

JUN 15 2021

RESOLUTION

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

WHEREAS, on November 9, 2020, JNP Capital Management ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create sixty-two (62) lots for Townhouse Living units and two (2) lot for Single-Unit Living dwellings on 10.91 acres of land in the CRT-1.0, C-0.5, R-0.5, H-55T and R-90 Zones with TDR 1.16 Overlay zone, located along the west side of Ridge Road (MD 27) approximately 475 feet north of Bethesda Church Road ("Subject Property"), in the Damascus Policy Area and 2006 *Damascus Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120210060, King Souder Property ("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 May 21, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 3, 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, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by the vote certified below.

Approved as to
Legal Sufficiency: /s/ Delisa Coleman
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210060 to create sixty-four (64) lots on the Subject Property, subject to the following conditions:¹

1. This Application is limited to sixty-two (62) lots for Townhouse Living units including the minimum required percentage of MPDUs and two (2) lots for Single-Unit Living dwellings.
2. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. 120210060, approved as part of this Preliminary Plan, as follows:
 - a. The Applicant must submit a Final Forest Conservation Plan ("FFCP") at time of Site Plan application. The FFCP must be in substantial conformance with the approved Preliminary Forest Conservation Plan ("PFCP").
 - b. Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
 - c. 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.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its Combined Preliminary/Final Water Quality Plan letter dated March 23, 2021 and hereby 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 provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated April 29, 2021 and incorporates them as conditions of the Preliminary

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.

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. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 4, 2021, 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.
6. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's ("MDSHA") requirements for access and improvements.
7. The Applicant must dedicate the rights-of-way and ensure construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes.
 - a. Public Street "A" consistent with MC 2001.01 as modified by MCDOT
8. 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 forty-five (45) feet from the existing pavement centerline along the Subject Property frontage for Ridge Road/MD 27.
 - b. All land necessary to accommodate forty (40) feet from the existing pavement centerline along the Subject Property frontage for Bethesda Church Road.
9. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a 10-foot wide shared use path along the property frontage on Ridge Road/MD 27.
10. Prior to the recordation of plat(s), the Applicant must ensure construction of the following off-site improvement(s) by satisfying MDSHA requirements to construct a 10-foot wide shared use path and 5 foot x 8 foot concrete pad for the existing RideOn bus stop on the west side of Ridge Road/MD 27 that extends approximately 250 feet, from the southern boundary of the Subject Property to the existing sidewalk ramps at the northwest corner of Ridge Road/MD 27 and Bethesda Church Road.

11. Record plat must show all necessary easements.
12. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Liber 28045 Folio 578 ("Covenant").
13. Before clearing or grading or recording a plat for the Subject Property, the Applicant must receive Staff certification of a Planning Board-approved site plan. The number and location of site elements, including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, open spaces, and bikepaths will be determined through site plan review and approval.
14. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan or site plan amendment.
15. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty (60) months from the date of mailing of the Planning Board resolution.
16. The Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date 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 filed.
17. The Certified Preliminary Plan must contain the following note:

"Unless specifically noted on this plan set or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
18. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a. Dimension the right-of-way along Bethesda Church Road to indicate forty (40) feet from the centerline in order to confirm the Master Plan recommended amount of right-of-way dedication.

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

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

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the lots are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type (Townhouse Living units and Single-Unit Living dwellings) use contemplated for the Property.

The lots were reviewed for compliance with the dimensional requirements for the CRT and R-90 zone as well as the TDR 1.16 Overlay zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage and can accommodate the Townhouse Living (attached) units and Single-Unit Living (detached) units which can reasonably meet the width and setbacks requirements in that zone. The CRT portion of the Subject Property is located in the TDR 1.16 Overlay zone as a receiving area, which allows additional density beyond the base zone when Optimal Method development is proposed. However, the Application did not seek the full density as permitted in the base zone nor the additional density as permitted in the Overlay Zone. Therefore, the Application is approved under the Standard Method in accordance with Section 4.9.17.A of the Zoning Ordinance.

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

The Preliminary Plan substantially conforms to the recommendations included in the 2006 Damascus Master Plan. The Property is located within two areas of the Master Plan: the Town Center area (CRT zoned land) and the Neighborhood Transition area (R-90 zoned land).

The community's vision for the Town Center is described as a "viable, walkable, human scaled town easily identifiable as the heart of the surrounding community." For the portion of Property located in the Town Center, the Master Plan recommends concentrated densities to create a mixed-use core with supporting residential densities of 15 to 20 dwelling units per acres. The Application provides a density of 5.6 dwelling units per acre, which does not

exceed the recommended densities for the Property. Furthermore, the Town Center portion of the Property is located in the Mixed-Use (Residential Emphasis) category and is shown on the Town Center Illustrative plan (p. 17). The illustrative plan shows existing and potential buildings and roads, as recommended. The Preliminary Plan layout is generally consistent with the illustrative plan in scale and layout.

For the portion of the Property located within the Neighborhood Transition area, it is identified as #12 Souder and Vicinity as a developable site for up to 14 dwelling units (p. 24). The Master Plan recommends that “[i]f all or a portion of this property is jointly subdivided, and site planned comprehensively with the adjacent King/Souder property, every effort should be made to facilitate joint development.” This Application follows this recommendation by assembling 3 separate parcels into a single subdivision. Further guidance provides that development should avoid disturbance on slopes exceeding 15 percent and that development be compatible with the existing development pattern. The Applicant has indicated that disturbance is avoided on slopes greater than 15 percent. Further, the layout of the single-family residences in the Neighborhood Transition Area of the Application is compatible with adjoining residential properties.

Furthermore, the Master Plan recommends the preservation of a “legacy open space site” on the northern portion of the Subject Property in the Town Center portion. Legacy Open Space is intended to protect existing open space that exhibits a high level of integrity of a natural environmental condition. As shown on the Preliminary Plan, the identified Legacy Open Space is reserved as such, and will not be developed. Because this Property is identified as Legacy Open Space, there was discussion with the M-NCPPC Parks Department during the DRC review process about acquiring this portion of the Property. However, the Parks Department was not interested in acquiring the Property at the time of review and reconfirmed their decision in an email dated May 14, 2021.

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

Vehicle Circulation and Connectivity

The Subject Property is accessed from Ridge Road/MD 27 identified by the 2018 *Master Plan of Highways and Transitways* as a two-lane business district road with an 80-foot right-of-way (ROW). The Application dedicates 45 feet of right-of-way from the centerline of Ridge Road/MD 27 which exceeds the Master Plan recommendation in order to provide the frontage improvements shown on the Preliminary Plan. The Subject Property’s frontage along Ridge Road/MD 27 includes two travel lanes in each direction, consisting of a four-lane section. The Subject Property’s frontage along Bethesda Church Road is identified as an 80 ft.

ROW minor arterial. As part of this Application, forty (40) feet of right-of-way dedication along Bethesda Church Road is required per the Master Plan.

Vehicular access to the Subject Property is provided along the west side of Ridge Road located at the approximate location of the existing driveway, located opposite of the shopping center driveway on the east side of Ridge Road, as shown is Figure 7. A public street with a single full turning movement lane will facilitate egress traffic from the Property to Ridge Road/MD 27 and a single receiving lane will facilitate ingress traffic from Ridge Road/MD 27.

The roadway network is comprised of a public road utilizing a modified cross-section standard of MC-2001.01, Tertiary Residential Street, has been approved by MCDOT for two lanes of traffic, parking on one side, curb and gutter, and sidewalks on both sides. The main spine for the Subject Property is to be constructed as a Tertiary Residential street with a 54-foot right-of-way. Stormwater management for this road is addressed in separate parcels. Private alleys in portions of the Subject Property supporting rear-loaded townhomes will be constructed with 20 feet of pavement on 25-foot-wide parcels to be maintained by the HOA. As discussed above, the Planning Board approves of these modified cross-sections. The vehicular circulation pattern is safe and adequate for the use.

The public road terminates in a temporary hammerhead turnaround on the western end of the Property. This temporary turnaround is planned to be replaced in the future with an inter-parcel connection, extending the public road into the adjacent property, consistent with the Subdivisions Regulations 50.4.3.E.1.c to not preclude future road connections. The grade just beyond the property line is steeply sloping down into the stream valley on the adjacent property; it is expected that regrading of this connection will be necessary as part of development of the neighboring property. The Applicant will support this inter-parcel connection by providing additional temporary easement area from adjacent portions of Parcel K and Parcel F to accommodate grading; this will be determined as part of the subsequent site plan application.

Access to the two Single-Unit Living dwellings will be accommodated from this point via a shared driveway that splits into two driveways to serve these dwellings. The right-of-way at the terminus of the public road system abuts the boundary of the adjacent property to accommodate extension of the public street for inter-parcel connectivity and serve future development.

Pedestrian Circulation and Connectivity

A 10-foot-wide sidewalk will be constructed along the Property frontage on Ridge Road. This sidewalk extends off-site to connect to the existing sidewalk at the intersection of Bethesda Church Road and Ridge Road to provide access to Damascus Elementary School. Internal to the Property, 6-foot-wide sidewalks

will be constructed along both sides of the internal public street and will connect to Ridge Road. A private alley will provide direct access to the townhomes and a common open space area via a 5-foot sidewalk.

A 10-foot-wide paved trail connects the western end of the internal public road to Bethesda Church Road. This trail connects users to the Oak Ridge Conservation Park Trailhead, located on the opposite side of Bethesda Church Road from the Subject Property. The trail, featuring a common access easement, is opposite from the entrance of the internal natural surface trail system that meanders through the northern common open space area.

The Application provides two pedestrian connections to Damascus Elementary School with the exact location, width and surface type to be determined at Site Plan.

There are no recommended master planned bicycle improvements associated with this Application.

Parking

On-street and off-street parking is provided for the residential development. The majority of the parking spaces are provided via private driveways and garages, with twenty-six on-street parallel parking spaces located along the public road.

Public Transit Service

The RideOn 90 line operates along Ridge Road with low-frequency 30-minute headways. The nearest bus stops are located 330 feet south and 585 feet north of the Subject Property. The Applicant will also provide a 5' x 8' concrete pad for the existing RideOn bus stop on the east side of Ridge Road.

Local Area Transportation Review ("LATR")

The Application for 62 new Townhouse Living units and 2 Single-Unit Living dwellings are predicted to generate 52 and 67 net new person trips during the AM and PM peak-hours respectively. As the Application generates more than 50 peak-hour person trips, a full traffic study was required to satisfy the LATR guidelines.

The Traffic Study was submitted on October 30, 2020. Three existing intersections with Ridge Road were studied at Bethesda Church Road, Site Access, and MD 108 to determine whether they met LATR congestion standards.

All intersections are located in the Damascus Policy Area, which has a Critical Lane Volume ("CLV") standard of 1,400. All three intersections operate below congestion standards and no improvements are necessary. A signal warrant

analysis was conducted for the Site Driveway/Ridge Road/Shopping Center Driveway for Warrant 3 and was not warranted.

Table 1 – Trip Generation²

| Development | Measure | AM Peak Hour | | | PM Peak Hour | | |
|-------------------------------|---------|--------------|-----|-------|--------------|-----|-------|
| | | In | Out | Total | In | Out | Total |
| Townhomes (ITE 220) | 62 du | 7 | 23 | 30 | 25 | 14 | 39 |
| Single Family Homes (ITE 210) | 2 du | 0 | 1 | 1 | 1 | 1 | 2 |
| Net New Vehicle Trips | | 7 | 24 | 31 | 26 | 15 | 41 |
| Net New Person Trips | -- | | | 52 | | | 67 |

Source: Wells + Associates Local Area Transportation Review revised on February 17, 2021

Table 2 – Critical Intersection Capacity Analysis

| Intersection | Traffic Conditions | | | | | |
|---|--------------------|------|------------|------|--------------|------|
| | Existing | | Background | | Total Future | |
| | AM | PM | AM | PM | AM | PM |
| <i>Damascus Policy Area (CLV 1,400)</i> | | | | | | |
| 1. Ridge Road & Bethesda Church Road | 744 | 1035 | 758 | 1053 | 776 | 1080 |
| 2. Ridge Road & MD 108 | 696 | 730 | 710 | 742 | 713 | 748 |
| 3. Ridge Road & Site Driveway | 371 | 561 | 378 | 571 | 403 | 586 |

Therefore, existing lane use and traffic controls, with the exception of the site driveway intersection improvement and a potential crosswalk from the 10-foot-wide trail, will be consistent with the existing conditions.

The Application is consistent with the 2018 *Master Plan of Highways and Transitways*, the 2018 *Bicycle Master Plan* and the 2006 *Damascus Master Plan*.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on March 4, 2021.

² *Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2017 LATR guidelines. Figures are rounded to nearest whole number.

The Fire Department Access Plan provides a fire code compliant access roadway from the Application entrance at Ridge Road/MD 27 to the termination of the public street (Public Road "A"). Additional fire access and turnaround capability is provided by private alleys to provide access to every dwelling unit and allow fire trucks to exit the Property. The fire compliant public street and private alleys meet all the required turning radii, widths, and turnaround requirements for fire trucks serving the Subject Property. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy (2016-2020 SSP) in effect at the time that the Application was submitted.

Overview and Applicable School Test

The Preliminary Plan is scheduled for Planning Board review in June 2021. Therefore, the updated FY21 Annual School Test, approved by the Planning Board on December 17, 2020 and effective January 1, 2021 is applicable. This Application is for the development of 62 Townhouse Living units and 2 Single-Unit Living dwellings.

School Adequacy Test

The Application is served by Damascus Elementary School, John T. Baker Middle School and Damascus High School. Based on the FY21 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 3 - Applicable FY2021 School Adequacy.

| School | Projected School Totals, 2024 | | | | Adequacy Status | Adequacy Ceilings | | |
|------------------|-------------------------------|------------|---------------|------------------|-----------------|-------------------|--------|--------|
| | Program Capacity | Enrollment | % Utilization | Surplus/ Deficit | | Tier 1 | Tier 2 | Tier 3 |
| Damascus ES | 355 | 404 | 113.8% | -49 | No UPP | 36 | 53 | 76 |
| John T. Baker MS | 741 | 849 | 114.6% | -108 | No UPP | 18 | 43 | 152 |
| Damascus HS | 1,543 | 1,427 | 92.5% | +116 | No UPP | 296 | 425 | 657 |

The school adequacy test determines the extent to which the Applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. If an application is estimated to generate more students than the identified ceilings, then payments at multiple tiers will be required.

Calculation of Student Enrollment Impacts

To calculate the number of students generated by the Application, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure

type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 64 single family units: 2 single family detached, and 62 single family attached, the Application is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

Table 4 - Estimated Student Enrollment Impacts.

| 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 Detached | 2 | 0.198 | 0.396 | 0.112 | 0.224 | 0.156 | 0.312 |
| SF Attached | 62 | 0.230 | 14.260 | 0.120 | 7.440 | 0.157 | 9.734 |
| MF Low-rise | 0 | 0.124 | 0.000 | 0.063 | 0.000 | 0.073 | 0.000 |
| MF High-rise | 0 | 0.023 | 0.000 | 0.013 | 0.000 | 0.019 | 0.000 |
| TOTALS | 64 | | 14 | | 7 | | 10 |

On average, this Application is estimated to generate 14 elementary school students, 7 middle school students and 10 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 4, therefore split payments across multiple UPP tiers are not required.

Analysis Conclusion

Based on the school capacity analysis performed, using the FY2021 Annual School Test, there are adequate school facilities to support this Application and therefore the Application does not require Utilization Premium Payments.

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.

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420210200 for this Property was approved on September 28, 2020. The

NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The Subject Property consists of three parcels, Parcel 838, Parcel 885 and Parcel 867 totaling 10.91 acres. The Subject Property is in the Bennett Creek watershed, a Use Class III-P stream as defined by the Maryland Dept. of Natural Resources. The NRI/FSD shows that on the Subject Property there is 6.36 acres of high priority existing forest separated into two (2) distinct forest stands. The Subject Property slopes from Ridge Rd. ("MD 27") and the southern property line to the north and northeast. A perennial seep and stream are located in the low point at the northern corner of the Subject Property. There is also a small section of steep slopes located along the northeast property line. There is a stream buffer that covers the stream, seep, steep slopes and a portion of the existing forest in the northern corner of the Property.

Forest Conservation Plan

The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines.

The Subject Property is split-zoned with 9.06 acres in the CRT zone and 1.84 acres in the R-90 zone. The CRT Zone is assigned a Land Use Category of Mixed-Use Development and the R-90 Zone is assigned a Land Use Category of High Density Residential as defined in Section 22A-3 of the FCL and in the Land Use Table of the Trees Technical Manual. This results in an afforestation requirement of 15% and a conservation threshold of 20% of the Net Tract Area.

The PFCP shows a total Net Tract Area of 11.14 acres for the two zones. This includes the net tract of 10.91 acres plus 0.23 acres for offsite work associated with this Application. There is a total of 6.36 acres of forest on the Subject Property. Within the R-90 Zone there is a total of 1.51 acres of existing forest, the Applicant proposes to remove 1.00 acres and retain 0.51 acres. This results in a reforestation requirement in the R-90 Zone of 0.11 acres. Within the CRT Zone there is a total of 4.85 acres of existing forest, the Applicant proposes to remove 3.23 acres and retain 1.62 acres. This results in a reforestation requirement in the CRT zone of 1.23 acres. Combining the reforestation requirements for both zones results in an overall reforestation requirement of 1.34 acres. The Applicant proposes to satisfy this requirement by providing 0.39 acres of reforestation onsite and to take the balance of 0.95 acres to an offsite forest bank or pay a fee-in-lieu if no forest bank mitigation credits are available. All the retained forest and the environmental buffer area will be protected by a Category I Conservation Easement. All the retained forest, planted forest, and the

stream buffer area will be protected by a Category I Conservation Easement.

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 seventeen (17) 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.

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

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

Granting the variance will not confer a special privilege on the Applicant as the removal or impacts to the 17 Protected Trees is due to the location of the trees and necessary site design requirements. The Applicant will provide mitigation for the removal of Tree #82. Therefore, The Planning Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, the necessary design requirements of this project and the location of the Protected Trees within the developable area of the Subject Property.

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 existing conditions 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 variance does not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer, wetland or special protection area. On-site mitigation for the removal of the Protected Trees within the forest will ultimately replace the functions currently provided by the Protected Trees to be removed. The Applicant is proposing to mitigate for the one Protected Tree being removed outside of a forest stand by planting three 3" caliper overstory trees as replacement. As a result, the Planning Board finds that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There are 10 trees proposed for removal in this variance request resulting in a total of 341.5 inches of DBH being removed. Nine of the 10 trees being removed are located within an existing forest stand on the Subject Property. It is M-NCPPC policy not to require mitigation for specimen trees removed within forest stands since the removal of the forest stand is compensated for through the Forest Conservation Worksheet. However, Tree #82, a 31" DBH White Mulberry, is outside of a forest stand and the Applicant will provide mitigation for the loss of this specimen tree by replacing the total number of DBH removed with $\frac{1}{4}$ of the number of inches replanted. This results in a total mitigation of 8 inches of replanted trees. In this case, the Applicant must plant 3 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. Additionally, no mitigation is required for trees that are impacted, but retained.

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

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on March 23, 2021. The Application will meet stormwater management goals through the use of landscape infiltration practices, microbioretention practices, micro-infiltration trenches, and drywells.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

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

There are no other applicable provisions specific to the Property that are necessary for approval of this Application.

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 JUN 15 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 Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, June 3, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board