



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

MCPB No. 20-140
Preliminary Plan No. 120200110
Ashford Woods
Date of Hearing: January 21, 2021

FEB 23 2021

RESOLUTION

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

WHEREAS, on December 10, 2019, Natelli Communities ("Applicant") filed an application for approval of a preliminary plan of property to create 326 lots for a residential development consisting of 322 single-family attached units and 42 two-over-twos, including 25 percent MPDUs, for a total of 364 dwelling units in the R-90, R, Clarksburg East Environmental Overlay and Clarksburg West Environmental Overlay Zones located in the southwest quadrant of the intersection with Frederick Road and Comus Road ("Subject Property" or "Property") in the Clarksburg Policy Area and 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* ("1994 Plan") & 2014 *Clarksburg Ten Mile Creek Area Limited Amendment* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120200110, Ashford Woods ("Preliminary Plan" or "Application"); and

WHEREAS, on May 17, 2001, the Planning Board, by Opinion mailed on June 26, 2010, approved Preliminary Plan No. 120000890, for a commercial catering facility with both on and off site operations in the R-200 Zone, located on southwest side of Frederick Road, approximately 3,000 feet North of Clarksburg Road, in the Clarksburg Policy Area and the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*; and

WHEREAS, Applicant's Application will supersede all conditions of approval of Preliminary Plan No. 120000890, Egan Barbecuers Property; 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 January 11, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to 2425 Reddie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605
Legal Sufficiency: www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

M-NCPPC Legal Department

WHEREAS, on January 21, 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 January 21, 2021, 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 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson and Verma, voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200110 to create 326 lots for a residential development consisting of 322 townhouse units and 42 two-over-twos for a total of 364 units, including 25 percent MPDUs, for a total of 364 dwelling units on the Subject Property, subject to the following conditions:¹

General Approval

- 1) This approval is limited to 326 lots for 364 new dwelling units, including 322 single-family attached and 42 multi-family dwelling units, including a minimum of 25 percent moderately priced dwelling units (MPDUs).
- 2) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120200110, approved as part of this Preliminary Plan:
 - a. Prior to certification of the Preliminary Plan, the Applicant must revise the Preliminary Forest Conservation Plan to address comments in ePlans, including, but not limited to the following:
 - i. Remove all references to the proposed barriers to address noise mitigation.
 - ii. Label all existing easements that will be abandoned as part of this Application.
 - b. Prior to Certification of the Site Plan, the Applicant must obtain Maryland-National Capital and Planning Commission ("M-NCPPC") approval of a Final Forest Conservation Plan ("FCP") consistent with the approved Preliminary Forest Conservation Plan.
 - c. The Final FCP must include the proposed Transit Easement and associated Public Utility Easements (PUE) and update all related forest conservation clearing, retention and planting calculations, including the forest conservation worksheet, as necessary.
 - d. The Final FCP must include an updated limit of disturbance and Tree Variance Request to include applicable affected trees associated with the

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.

Final Stream and Wetland Restoration Plan and improvements on the Western Parcel for the dedicated park. The updated Tree Variance Request must also include any applicable trees impacted by the off-site limits of disturbance.

- e. The Final FCP must include planting plans for the reforestation areas, tree variance mitigation, and the meadow planting areas within the environmental buffers that are not able to be reforested due to existing easements to remain.
- f. The Final FCP must include the final disposition of the existing pond. If the Maryland Department of Environment ("MDE") or MCDPS determines that the pond must be removed, the conversion of the pond to a wetland must be shown on the Final Forest Conservation Plan and Final Stream and Wetland Restoration Plan, including a planting plan.
- g. The Final FCP must designate the specific areas on the Property proposed for the potential creation of a forest bank.
- h. The creation of a forest bank on the Property is subject to final approval of the amount and specific areas to be included in the bank, as determined after consultation with the M-NCPPC forest bank program Staff.
- i. The final approval of the forest bank and the administrative procedures for implementing the bank will be determined after meeting with Staff and prior to initiating any transactions for the forest bank. The Applicant may only sell credits from the forest bank while they maintain ownership of the land where the bank exists.
- j. Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record new Category I Conservation Easements over all areas of forest retention, forest planting, and environmental buffers that will not be conveyed to the M-NCPPC Department of Parks or that will not be encumbered by other easements, as specified on the approved Final Forest Conservation Plan. The Category I easement(s) shall permit the construction of all activities associated with the implementation of the approved plans, including but not limited to, the Final Forest Conservation Plan, certified site plan and final engineering plans, such as the construction of utilities, including stormwater management facilities, demolition, removal and restoration of existing structures and impervious areas, and grading. The new easement agreements 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 prior to recordation of the deed of abandonment for the existing conservation easements. The entirety of the existing easements remains in full force and effect until the abandonment document(s) and the revised easements have been approved and recorded in the Montgomery County Land Records. The Book/Page for the new easement(s) must be referenced on the record plat(s).

- 3) Impervious surfaces are limited to no more than 11.8 percent (or 725,678 square feet) of the area under application for development within the Clarksburg East and West Environmental Overlay Zones.
- 4) Prior to Certification of the Preliminary Plan, the Applicant must submit a revised Impervious Surface Exhibit that addresses the following items.
 - a. Include 7,500 square feet of impervious surface for the park improvements on the Western Parcel identified as Parcel 787.
 - b. Include impervious surface for three additional sidewalk segments along on-street parking areas on Street A and Street E.
 - c. Exclude the deduction of the existing accel/decel lanes that are proposed to be removed from the impervious surface calculations.
- 5) Prior to the 50th above-grade building permit, the Applicant agrees to convey, in fee simple to Maryland-National Capital Park & Planning Commission ("Commission") approximately +/-39.9 acres of the Subject Property identified as Parcel P787 on Tax Map EW122 as shown on the approved Preliminary Plan for use as a master planned park per the 2014 *Ten Mile Creek Area Limited Amendment Master Plan*. Prior to accepting the conveyance area:
 - a. The Applicant must conduct a boundary survey and set field survey markers (Green and Whites) as part of the land transfer.
 - b. Areas to be conveyed to Parks must be free and clear of unnatural debris and structures, unless otherwise approved.
 - c. Applicant to construct a gravel trailhead parking lot able to accommodate 10-12 vehicles and a driveway entrance with at least 20-feet in width with the apron approaching 30-feet in width, subject to review and approval through the Montgomery County Park Construction Permit process.
- 6) The Applicant must submit and obtain Planning Board approval of a Final Stream and Wetland Restoration Plan at the time of Site Plan consistent with the Preliminary Stream and Wetland Restoration Plan submitted by the Applicant, and the final plan must be reviewed by MCDEP, M-NCPPC Department of Parks and M-NCPPC Department of Planning. The Final Stream and Wetland Restoration Plan must:
 - a. Include a field survey and conceptual engineering designs, including proposed restoration approach, details and plan and profile.
 - b. Take into account changed hydrology at the site as a result of any new development and accommodate flexibility at the time of construction to adapt to any adjustments that may have occurred within the areas of the channel identified for restoration.
- 7) The Applicant must place proposed Category I easements associated with the northern tributary into a separate parcel. The M-NCPPC Parks

Department may request ownership if determined necessary for a future greenway or trail connection. If a forest bank is established on the parcel, the Applicant must be granted five (5) years for the required maintenance period for the establishment of the planted forest prior to the conveyance of the parcel. Language is to be placed on the applicable record plat(s) that M-NCPPC may pursue transfer, with area to be limited to conservation parkland consistent with a Category I Conservation Easement.

- 8) Prior to issuance of sediment control permits or prior to record plat, whichever one comes first, the Applicant must provide the M-NCPPC Department of Parks and Planning Department Staff the results of the Rare Threatened and Endangered Species surveys with mitigation measures for areas within the Limits of Disturbance for the development on the Property. The Rare Threatened and Endangered Species surveys must be performed per standard protocols by an experienced professional. Prior to issuance of sediment control permits or prior to record plat, whichever one comes first, the Applicant must implement the mitigation measures referenced in the survey.
- 9) Prior to issuance of any above ground building permit, the Applicant must provide certification from MCDPS that the existing sewage disposal areas have been properly removed/abandoned.

Outside Agencies

- 10) The Planning Board has reviewed and accepts the recommendations except for conditions no. 1 and condition no. 10 of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 7, 2021, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations except for condition no. 1 and condition no. 10, as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 11) Prior to issuance of any above ground building permit on the Subject Property, the Applicant must satisfy MCDOT's design requirements for access and improvements.
- 12) Prior to issuance of any above ground building permit, the Applicant must satisfy the Maryland State Highway Administration's design requirements for improvements.
- 13) The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated November 6, 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.

- 14) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service – Water Resources Section in its Preliminary Water Quality Plan approval letter dated October 20, 2020, 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.
- 15) The Planning Board has reviewed and accepts the recommendations of Potomac Edison in an email dated October 27, 2020, 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 email, which may be amended by Potomac Edison provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 16) The Applicant must follow the Montgomery County Department of Permitting Service’s—requirements for soil preparation, top-soiling, soil stabilization and soil amendments for any graded areas of 1,000 square feet or more that will be vegetated with grass. These requirements must be reflected on the Final Water Quality Plan, subject to MCDPS approval.
- 17) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply Section in its letter dated October 14, 2020, 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.
- 18) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in an email dated October 21, 2020.

Site Plan Approval

- 19) The Applicant must receive Staff certification of a Planning Board-approved site plan, before clearing, grading or issuance of any building permit.

- 20) If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration shown on this Certified Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan or Site Plan Amendment.
- 21) The final number of MPDUs is to be determined at the time of site plan.
- 22) The final setbacks, minimum lot areas, lot dimensions, building coverage, and height of the principal building and accessory structures will be determined at the time of site plan.
- 23) Final approval of the size and location of buildings and open space amenities will be determined at the time of site plan.
- 24) Prior to Site Plan approval, the Applicant must address the following modifications to better integrate the open space areas with the residential development and create additional vistas into the rural open space.
 - a. Provide a gap of approximately 40-feet between Units 223 and 224, and Units 220 and 221, along the western side of the development.
 - b. Provide a gap of approximately 40-feet between Units 235 and 236, and Units 183 and 184, that roughly aligns with the centerline axis of Alley 6.
 - c. Provide a gap of approximately 15-feet between Units 34 and 35, 98 and 99, 133 and 134, and 229 and 230.
 - d. Provide a gap of approximately 15-feet between the two-over-two buildings with Units 333-334 and the two-over-two building with Units 335-336 (north of the open space located southwest of the development).

Transportation/Access

- 25) The Applicant must dedicate and show on the record plat all land necessary to accommodate right-of-way dedication as illustrated in the Preliminary Plan along the frontage of Frederick Road (MD 355).
- 26) Prior to the release of the 50th building permit, all conduit necessary to support construction of the future traffic signal at the site entrance at Snowden Farm Parkway and Frederick Road must be installed and approved by the Montgomery County Department of Transportation and State Highway Administration. Plans for the implementation of this conduit shall be provided with the application for access permit.
- 27) Prior to the release of the 270th building permit, the Applicant shall install a traffic signal at the intersection of Snowden Farm Parkway and Frederick Road, subject to the approval of the Montgomery County Department of Transportation and State Highway Administration.

- 28) The Applicant must construct all private streets and alleys, including any storm drainage facilities, private utility systems and other necessary improvements as shown on either the Preliminary Plan or the subsequent Site Plan within the private street parcels.
- 29) The Applicant must provide Private Roads A, B, C, D, E, 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. The record plat must show the Private Road in a separate parcel.
 - b. The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq.
 - c. Before issuance of building permit, 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. A separate bond shall be set aside for ongoing maintenance requirements with respect to the private roads, to be consistent with the Declaration of Restrictive Covenant for Private Roads.
- 30) The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for one hundred and twenty (120) months from the initiation date of this Planning Board Resolution. Because the APF and Preliminary Plan validity periods are longer than the typical five years, phasing schedules in accordance with Sections 4.1.C.9.b, 4.2.G.2.b.iv, and 4.3.J.5.b of the Subdivision Regulations are required.
 - a. *Transportation and non-school public facilities* - The APF validity period phasing schedule

for transportation and non-school public facilities is as follows. Building permits apportioned by each phase must be obtained, and other phase requirements satisfied, prior to the expiration of the applicable phase period:

Phase A - Within 60 months (5 years) of the Initiation Date of the Plan - Building permits issued for a minimum of 25 dwelling units, including MPDUs.

Phase B - Within 108 months (9 Years) of the Initiation Date - Building permits issued for a minimum of 183 dwelling units, including MPDUs.

Phase C - Within 120 months (10 Years) of the Initiation Date - Balance of building permits for the remaining dwelling units, including MPDUs; the WSSC pump station is constructed and operating.

- b. *Preliminary Plan Validity Schedule* - The full cumulative allowance apportioned by each

phase is to be recorded, and any applicable requirement is to be satisfied, prior to the expiration of that phase. Plats may be recorded at any time in advance of a valid phase period.

Phase I: 36 Months (3 years) from Initiation Date of the Plan - No plats necessary; applications are submitted to relevant agencies for the Site Plan and pump station.

Phase II: 48 Months (4 Years) from Initiation Date - Plats must be recorded a total of 4 lots.

Phase III: 72 Months (6 Years) Plats must be recorded a total of 60 lots.

Phase IV: 108 months (9 Years) Plats must be recorded for a total of 183 lots.

Phase V: 120 months (10 Years) Plats recorded all remaining lots.

- 31) Prior to issuance of the first building permit, the Applicant must enter into a participation agreement with MCDOT to fully fund, via a fee in-lieu of construction, all 2018 Bicycle Master Plan required improvements along the property frontage of Frederick Road (MD 355), which includes a 10-foot-wide shared use path and a 6-foot-wide bikeable shoulder. The Agreement shall be reviewed and approved by staff of MCDOT, MDSHA and Montgomery Planning. This agreement must include cost estimates for the following elements:

- a. Construction of 10-foot-wide shared use path
- b. Construction of 6-foot-wide bikeable shoulder on the west side of MD 355
- c. Grading necessary for construction
- d. Relocation of utilities, if necessary
- e. Associated stormwater management
- f. Associated street trees and streetlights

Record Plats

- 32) The record plat must reflect all areas to be conveyed to a Homeowners Association ("HOA") and specifically identify stormwater management parcels and private alleys.
- 33) The Record Plat must show all private streets and alleys within their own parcel(s).
- 34) The Record Plat must reflect an ingress/egress easement over all private streets and alleys, designated for the benefit of all properties with access to the alleys. All private streets alleys shall be bound to the standard covenant for private streets and alleys as approved by DPS.
- 35) The Record Plat must ensure the recording of Public Utility Easements along all street segments or locations as identified on the Certified Preliminary Plan.
- 36) The record plat must show all necessary easements.
- 37) Prior to record plat, the Applicant must abandon or release the existing transit easement held with Montgomery County and record the new boundaries of the transit easement, which must be reflected on the plat, as approved by the Planning Board with this Application. Notation regarding the abandonment shall be added to the Certified Preliminary Plan and the Plat.
- 38) Prior to record plat, the Applicant must obtain a release of the snow fence easements.
- 39) Prior to recordation of any plat, the Site Plan must be certified by M-NCPPC Staff.
- 40) Prior to recordation of a plat for the Subject Property, the Applicant must preserve in perpetuity either by dedication as parkland or by application of one or more easement(s) or covenant(s) an area amounting to no less than 80 percent (or approximately 105.4 acres) of the net tract area of the Subject Property, as qualified rural open space and as identified on the Certified Preliminary Plan. The Applicant must record the easement(s) or covenant(s), in a form approved by the M-NCPPC Office of General Counsel, among the Montgomery County Land Records. The easement(s) or covenant(s) must include provisions for public access within the trail network of the Subject Property, and the potential for future connections to/from adjoining properties. Reference to the recorded easement or covenant must be noted on the Certified Site Plan and record plat(s).

Certified Preliminary Plan

- 41) The certified Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
- 42) The Applicant must provide exhibits detailing the placement of the transit easement as part of the certified Preliminary Plan.
- 43) Prior to Certification of the Preliminary Plan, the Applicant must make the following changes:
- a. Include a copy of the resolution and applicable Agency approval letters on the approval sheets.
 - b. Include an exhibit demonstrating all existing and proposed easements.
 - c. Sheet 1:
 - i. Update the data table to match the data table in the staff report.
 - ii. Include the calculation for the number of parking spaces required for the community center and reference the parking waiver request.
 - d. Impervious Surface exhibits must be updated to address the items listed under condition no. 4.
 - e. Revise all applicable sheets to remove mention of public streets and replace with private streets.
 - f. The Applicant must remove all areas labeled as public utility easement within the area of the proposed transit easement and replace with a comparable 10-foot-wide public utility easement outside the transit easement, along the length of frontage of Frederick Road.
 - g. Revise all applicable sheets to include additional areas of 6-foot-wide sidewalk along the following sections:
 - i. Street A along on-street parking that fronts Lots No. 240 – 255,
 - ii. Street A along on-street parking that fronts Lots No. 310 – 322, and
 - iii. Street E along on-street parking that fronts Lots No. 40 – 49.

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 layout of the subdivision, including size, width, shape, and orientation of the lots are appropriate for the location of the subdivision considering the recommendations in the Master Plan for a walkable residential development with an emphasis on environmental protection. The lots also comply with the dimensional requirements for the R-90 Zone under the optional method and the development standards of the Clarksburg East Environmental (CEE) Overlay Zone as specified in the Zoning Ordinance as shown in Table 1 below. Also since development is not on the Western Parcel and this portion of the Property will be conveyed to M-NCPPC Parks, the Application also complies with the Rural Zone and the Clarksburg West Environmental (CWE) Overlay Zone.

Table 1 – Optional Method Development Standards in the R-90 Zone: MPDU Development, Sect. 4.4.8 & CEE Overlay, Sect. 4.9.5.D

Development Standards	CEE Overlay Zone Requirements	Required by the R-90 Zone under Sect. 4.4.8C ²	Approved by the Board
Tract Area (Total)	n/a	n/a	141.4 acres
Eastern Lot			99.18 acres
Previous right-of-way dedication			2.30 acres
Western Parcel			39.93 acres
Net Tract Area (Total)	n/a	n/a	131.8 acres
Eastern Lot			99.18 acres
Western Parcel			39.93 acres
Total ROW dedications			-2.80 acres
Transit Easement			-4.47 acres

² Pursuant to Sect 4.9.5.D.5.e., (w)hen site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks in the R-90 zone do not apply. Such requirements are determined during the site plan approval process under Sect. 7.3.4.

Development Standards	CEE Overlay Zone Requirements	Required by the R-90 Zone under Sect. 4.4.8C ²	Approved by the Board
Max Density ³ Eastern Lot Western Parcel	3.66 du/ac n/a	3.66 du/ac ⁴ 1 du/5 acres ⁵	3.59 du/ac (up to 364 units) 0
Lots Parcels	n/a n/a	n/a n/a	326 37
Rural Open Space (min)	80 percent	n/a	80%
Min. MPDUs	The maximum density with MPDU bonus density is 3.66 du/ac ⁶	12.5% + 1 ⁷	25%
Unit Type	Any type of dwelling unit is permitted, up to the maximum number allowed	Detached House, Duplex or Townhouse; Up to 50% townhouses or duplex permitted and up to 100% of townhouses or duplex permitted with Planning Board approval	Townhouses: 88.5% Multi-family: 11.5%
Dimensions (min) Lot Area (min) Building Coverage (min) Setbacks (min)	The min. lot area, lot dimensions, building coverage and building setbacks of the R-90 Zone do not apply and will be determined at site plan per Sect. 4.9.5.D.5.e	Not applicable under Sect. 4.9.5.D.5.e for properties in the Clarksburg West Environmental Overlay Zone and zoned R-90	Determined at site plan

³ Under Sect. 4.9.5 in the Clarksburg East Environmental Overlay zone , “the maximum density with MPDU bonus density is 3.66 units per acre”.

⁴ The Clarksburg East Environmental Overlay Zone under Sect. 4.9.5 supersedes the density specifications under Sect. 4.4.8.1 for properties in the R-90 Zone.

⁵ Properties are limited to 1 du/5 acres under Sect. 4.3.3.B in the R Zone, under the Standard Method Development Standards as discussed in the analysis section of the report.

⁶ Under Sect.4.9.5 the maximum density without MPDU bonus density is 3 du/ac.

⁷ This optional method of development is permitted where moderately priced dwelling units are included in a development above the minimum required by Chapter 25A, to facilitate the construction of those units under Sect. 4.3.2.A.

Development Standards	CEE Overlay Zone Requirements	Required by the R-90 Zone under Sect. 4.4.8C ²	Approved by the Board
Max. Principal Building Height Townhouse Multi-family	50 feet 65 feet	40 feet n/a	50 feet ⁸ 65 ⁹
Max. Accessory Structure Building Height (max)	n/a	25 feet	25 feet
Min. Vehicle Parking (min) Residential Community Center	n/a n/a	637 5	964 5 ¹⁰
Impervious Surface Level Application Area Total	12.4 percent (or 764,191 SF) ¹¹	 n/a	 11.8 percent (or 725,678 SF)

Impervious Area Limits of the Clarksburg East and West Environmental Overlay Zones

The Development Standards Table above notes impervious surface limit requirements and the Application's proposal for meeting them as required by Chapter 59. The Application is subject to Chapter 59, Sections 4.9.5 and 4.9.6, the Clarksburg East and Clarksburg West Environmental Overlay Zones, respectively. The requirements of the Overlay Zones include limits on impervious surfaces for the total area under application for development. Specifically, Section 4.9.5.D.1 (Clarksburg East Environmental Overlay Zone) states "...the maximum total impervious surface area for any development after August 4, 2014 is 15% of the total area under application for development", and Section 4.9.6.D.1 (Clarksburg West Environmental Overlay Zone) states "...the maximum total impervious surface area for any development after August 4, 2014 is 6 percent of the total area under application for development". The proposal consists of one application for development that includes properties on the east and west sides of I-270. The Properties are under one common ownership and the area east of I-270 is located within the Clarksburg East Environmental Overlay Zone (Section 4.9.5) and the

⁸ Pursuant to Sect. 4.4.8.C.4 the principal building height is limited to 40 feet; however in the CEE Overlay, any proposed townhouse may be 50 feet in height and 60-feet for apartment buildings under Sect. 4.9.5.D.5.d.

⁹ Pursuant to Sect. 4.4.8.C.4 the principal building height is limited to 40 feet; however in the CEE Overlay any proposed multi-family may be 65 feet in height under Sect. 4.9.5.D.5.d.iii.

¹⁰ This number is based on the number of on-street parking spaces through the parking waiver included with the Application.

¹¹ This percentage is based on total impervious limit for Eastern Lot and Western Parcel.

area west of I-270 is located within the Clarksburg West Environmental Overlay Zone (Section 4.9.6), both of which have impervious limitations of 15 percent and 6 percent, respectively. The Applicant is proposing to develop townhouses and multi-family dwelling units in excess of 15 percent imperviousness (at least 16 percent) on the east side of I-270 across from the terminus of Snowden Farm Parkway. The Property on the west side will remain largely forested and dedicated to M-NCPPC Parks as part of the Application. M-NCPPC Parks has requested the Applicant include an additional 7,500 square feet of impervious surface to construct an entrance driveway and a small gravel parking lot as part of its proposal. Collectively, as one Application and including both overlay zones, the Application is proposing 11.8 percent of impervious surface.

The 2014 *Ten Mile Creek Area Limited Amendment* and supporting materials make clear that increasing imperviousness in an area with an already relatively high imperviousness level has less of an environmental impact than increasing imperviousness in an area with a relatively low existing imperviousness level. The east side of I-270 already has a much higher imperviousness level than the west side, which is largely undeveloped. The Master Plan clearly anticipated a more intense form of development by allowing any unit type, dismissing the unit mix requirement and exemptions for public infrastructure projects along Frederick Road. As specifically contemplated by the Master Plan, the Western Parcel will be dedicated to Parks, and based upon Parks Department's requested improvements, imperviousness will increase from 0 percent to 0.043 percent.

The unique circumstances of this development require us to consider the "*total area under application for development*" in order to ensure the intent of these provisions is realized. Requiring the Applicant to reduce imperviousness by approximately one (1) percent from the Eastern Lot which is located within an area with a relatively high existing imperviousness level and have them potentially add six (6) percent of imperviousness on the Western Parcel which is located in the more environmentally-sensitive portion of the "total area" would be an undesirable result that would thwart the intent of the overlay zones as opposed to advancing their environmental protection goals.

Because one Application has been submitted for both the east and west sides of I-270, properties that are bisected by the I-270 right-of-way, the conclusion was reached, based upon the "*total area under application for development*" language present in both Sections 4.9.5 and 4.9.6, that exceeding the apparent 15 percent imperviousness cap on the east side was permissible. The resulting imperviousness within the Application Area is 11.8 percent (or 725,678 square feet) which is below the 12.4 percent (or 764,191 square feet) that would result if both the east and west sides were developed to their full potential. Furthermore, under Maryland common law, any ambiguity in the construction or application of zoning statutes must be resolved in favor of the landowner. As it is not clear what the solution is when one

application includes properties in both the CEE and CWE Overlay Zones, we believe that this interpretation is reasonable and favors the protection of the environmental resources, which is the intent of the Overlay Zones.

Specification for Site under MPDU Development, Sect. 4.4.8

The Clarksburg East Environmental Overlay Zone allows any unit type up to the maximum allowed, which is 3.66 dwelling units per acre with MPDU bonus density (Sect. 4.9.5.D.5b and Sect. 4.9.5.D.5c), which supersedes the specification requirement for developments reviewed under MPDU development under Sect. 4.4.8 of the Code. Under the CEE Overlay Zone, the Applicant must address environmental concerns on the Property and therefore a larger percentage of townhouses and allowing multi-family unit types are necessary to reduce the building envelope since these unit types require less area for the lots compared to limiting the unit type and percentage of unit type allowed under the R-90 Zone. A smaller building envelope also allows the Applicant to meet the impervious limitations and the 80 percent rural open space requirement as discussed above. Therefore, the Planning Board supports the unit type and unit mix for the Eastern Lot.

Block Design

The block design depicted on the Preliminary Plan is appropriate for the residential development. The length, width, and shape of all residential blocks are compatible with existing development patterns and land use goals for the Property. New residential blocks are located along Frederick Road right-of-way in the eastern portion of the Property with several additional blocks extending to the west. The blocks are of an appropriate length and width to accommodate pedestrian and vehicular circulation, and open space. The blocks are also designed to minimize impacts to the environmental features on the Property by locating them away from environmental buffers.

Lot Design

The lot size, width, shape, and orientation are generally appropriate for the location of the subdivision and for the residential uses. All lots will either front along Frederick Road or along the newly created private roads known as Street A, Street B, Street D, Street E and Street F. The dimensions of the lots will be able to accommodate the residential dwelling units and other infrastructure necessary to serve the lots. The lot design for new residential development is also consistent with the size, shape, width of the lots in the residential development known as Woodcrest southeast of the Property across Frederick Road, which is developed under the R-200 and RDT Zone.

The orientation and the density of the lots is also generally appropriate; however, the Planning Board is concerned with the long stretches of townhouse sticks that have narrow gaps in between them. This condition limits visual and physical access

to the surrounding rural open space areas, and effectively privatizes the rural open space in favor of the abutting lots. Ultimately, it prevents the full integration of the rural open space into the development as envisioned by the Master Plan. During the review of the Application, several recommendations were made to improve the configuration of lots in key areas. These issues are typically addressed at site plan to address Sect. 7.3.4.2.a, which states that the development must provide a “*safe, well integrated parking, circulation patterns, building massing and where required open spaces and site amenities*”. To address these concerns, the Planning Board has conditioned the Application to include modifications to the layout, which will be addressed at the time of site plan when the layout is finalized. These modifications include but are not limited to a) providing a gap of approximately 15-feet between Units 34 and 35, 98 and 99, 133 and 134, 229 and 230, and b) providing a gap of approximately 15-feet between the two-over-two buildings with Units 333-334 and Units 335-336 (north of the open space located southwest of the development), c) creating a vista into the rural open space from Alley 6 by providing approximately 40-foot-wide gaps between Units 183 and 184 and Units 235 and 236 d) integrating the rural open space areas to the residential development by providing approximately 40-foot-wide gaps between Units 223 and 224 and Units 220 and 221 along the western side of the development.

Public Sites and Adequate Open Spaces

The Application includes 80.9 percent of rural open space, and therefore, exceeds the 80 percent Rural Open Space requirement. Approximately 37 percent of land identified as rural open space will be conveyed for future parkland. Additionally, the Application will provide 13 percent of open space for recreation and amenities for the residential development within the buildable envelope. Centrally located is a recreation area that features a clubhouse, playground, and an open play field, and green area. The Preliminary Plan provides adequate open areas for amenities, recreation, and stormwater management. Public sites and open spaces will be evaluated in detail at the time of Site Plan(s).

Roads

The Project will establish a semi-regular street grid that enables bike and pedestrian access while minimizing added impervious surface. Two new intersections will connect the community to Frederick Road at Florence Street to the north, and Snowden Farm Parkway to the south. The intersection at Snowden Farm Parkway will be signalized in anticipation of the eventual completion of Snowden Farm Parkway that will serve as an eastern vehicular bypass of the Clarksburg historic district.

Abandonment and Replacement of Transit Easement

The Applicant requests the abandonment an existing approximately 7.15-acre transit easement and replacing it with an approximately 4.47-acre transit easement located along the length of the frontage of the Subject Property along Frederick

Road. The easement was provided to the County for a potential future CCT alignment and is shown on Plat No. 22882 from May of 2002. The abandonment request can be found as part of the Statement of Justification. Section 50.8.4 of the Subdivision Code allows the applicant who originally filed the plat which dedicated land to the County for public use or their successor in interest to petition the Planning Board to abandon land previously dedicated to the County if the land has not been in public use. This abandonment process is further discussed by Section 49-68 of the Montgomery County Code.

Based on Section 49-68(e) of the County Code, the Planning Board must find *“that the right-of-way is not necessary for anticipated future public use or that an alternative alignment or location will not adversely affect the public interest, the Board may authorize the right-of-way to be abandoned by incorporating the abandoned land into an amended plat of subdivision.”* Additionally, *“the amended subdivision plat must require the dedication of any land needed for rights-of-way, easements, and other public uses.”* The easement area requested for abandonment does not currently contain any utilities, or other improvements and therefore the Planning Board contends the easement area is not currently in public use. The Planning Board coordinated with MCDOT staff to determine if this easement area would reasonably be needed for future public use as part of our analysis. The original easement examined is well in excess of the typical BRT busway of around 50-feet in width and may have been a contingency for a light rail option that has not been pursued. Additionally, there are no active plans for a BRT route that would suggest a need for an easement area exceeding 50-feet in width. A minimum of 50-foot-wide easement, with greater width provided around Snowden Farm parkway to accommodate a potential future bus station, will be provided by the replacement easement. A total of approximately 4.47 acres will remain in the replacement easement area. This abandonment and replaced easement area have been reviewed by and is supported by the Planning Board and is adequate to accommodate a complete BRT facility. This request has similarly been reviewed and supported by MCDOT and SHA. The net 2.68-acres reduction of transit easement is not necessary for future use and can be abandoned without detriment, with 4.77 acres of easement to be retained and recorded for public use.

Private Roads

The Applicant is proposing that all internal streets be private. Modifications have been made to standard street cross sections to reduce overall width and pervious surface in light of the context of the 10 Mile Creek SPA, as discussed below.

As stated in the Applicant’s justification, the streets as modified limit overall cross section and pervious surface are context-sensitive regarding the Subject Property’s environmentally sensitive location in the 10 Mile Creek SPA. Additionally, the 2014 *Ten Mile Creek Area Limited Amendment* recommends reducing road cross sections for such purposes. A notable departure from public road standards is the removal of

sidewalk from one side of streets in select areas of the development area. As stated in their respective agency letters, neither MCDOT nor DPS will accept public roads within the context of a townhouse community without sidewalks on both sides of the street. However, this is in conflict with the intent of the Master Plan guidance in reducing overall street cross sections, with the Master Plan's explicit endorsement of removing sidewalks in areas deemed not essential. The Planning Board has reviewed the pedestrian circulation and, as conditioned, believes it to be adequate.

Roads are to be built to the construction specifications of the corresponding public road standards concerning paving detail and design data, including surface depth and structural design, as detailed in the cross sections of the Application. All modifications to standard sections, as discussed in subsequent sections, have been reviewed and are supported by the Planning Board and will be safe for general use for vehicular, pedestrian and bike circulation and meet accepted state and national standards.

As the road network is contained entirely within Subject Property, accessing only Frederick Road, it does not provide through connectivity. The road network is not needed to maintain area circulation and does not provide a continuous corridor to serve the public. It is not needed to be part of the network modeled for area capacity. All roads will be considered secondary streets, tertiary streets, or alleys, all of which are eligible to be permitted as private streets. The project will be reviewed by a site plan; will not create a segmented road ownership pattern; will not negatively affect the development of other properties; and no secondary street will connect to more than one higher-classification street (Frederick Road). As the Subject Property is bounded by Frederick Road to the east, I-270 to the west and rural open space and other environmental features to the north and south, additional connectivity to facilitate the subdivision of adjacent property is infeasible and unnecessary.

Required Transportation Findings and Parking Waiver

1. Minimum Centerline Radius Requirement, Ch. 50.4.3.E.2.g.ii

The Applicant is requesting a finding of the minimum centerline radius requirement for Street A and Street F, specifically for the two curves bounding the westernmost section of Street A, serving 30 dwelling units, as well as the two curves along Street F, serving 10 dwelling units. Both streets are to be constructed to modified secondary street standards. However, secondary streets are required to have a centerline radius no less than 150 feet. The Applicant instead requests a reduced radius of 100 feet, the minimum assigned to a tertiary street. The Planning Board supports this request as the tighter radius supports a correspondingly tighter development envelope, thereby reducing grading, deforestation, impervious surface, and other environmental impacts as recommended in the Master Plan. The road will continue to operate safely and appropriately as the road will carry volumes at these

corners equivalent to those of a typical tertiary street for which a 100-foot radius is acceptable. Additionally, these corners will reduce vehicular speeds in this entirely residential neighborhood, enhancing safety for bicyclists and pedestrians.

2. Open Section Road Requirement, Ch. 49.33.1

This Applicant is requesting a finding that the roads not be constructed with open sections and requests the use of curbs and gutters. The Eastern Lot is located within the Ten Mile Creek Special Protection Area. The Director of the Department of Permitting Services may approve the installation of curbs and gutters following Planning Board comment if: (A) installing curbs and gutters will not significantly degrade water quality in the area; (B) curbs and gutters are necessary for vehicular or pedestrian safety or the proper grading or maintenance of the road, or to reduce the environmental impact of the road on any park, forest, or wetland; and (C) a preliminary subdivision plan or site plan approved by the Planning Board for the land abutting the portion of the road where curbs and gutters may be installed expressly permits the curbs and gutters to be installed, if either plan is required for the land in question.

The Applicant proposes use of curbs and gutters for the townhouse and multi-family development, and the Master Plan supports a higher density and mix of uses in the Clarksburg East Environmental Overlay Zone. The use of curb and gutter design allows for a significantly reduced right-of-way to accommodate a denser housing development which allows for a more efficient use of the Property and greatly reduces overall local environmental impact. Additionally, the reduction in roadway length due to a more compact development reduces impervious surface. Last, the addition of adequate stormwater facilities will alleviate degradation of water quality.

3. Off-Street Parking Requirement for Community Center, 59.6.2.4.B

The Applicant is requesting a waiver of the off-street vehicle parking requirement for the community center. Pursuant to Sect. 59.6.2.4.B the number of parking spaces required for the 2,200 square foot community center is five. The Applicant is requesting the Planning Board waive the required off-street parking required. In lieu of accommodating these as off-street spaces, the Applicant is providing adequate adjacent on-street parking along Street D, which includes 16 spaces.

The layout of the developed portion of Subject Property is a compact form to enhance environmental responsibility. All residents will live within an approximately ten-minute walk to this amenity that is centrally located, with the majority within a five-minute walk. The community center will also include six bicycle parking spaces. The need for parking and driving is therefore significantly reduced, and perhaps even discouraged in favor of walking and biking. Importantly, the elimination of a surface parking lot reduces impervious area in the Ten Mile Creek SPA, while providing additional opportunities for recreation amenities as

part of the open space for residents and visitors. The adjacent on-street parking spaces nevertheless provide a safe, efficient, and direct route to the community center. This recommendation has additionally been reviewed and supported by MCDOT and DPS staff.

Specification for Density, Sect. 4.4.8

This optional method of development is permitted where moderately priced dwelling units are included in a development above the minimum required by Chapter 25A, to facilitate the construction of those units. Optional method MPDU Development allows an increase in density above the total number of dwelling units allowed by the standard method of development, allows additional building types and provides more flexibility for certain dimensional standards. The Application includes 25 percent of MPDUs which is more than the required 12.5 percent and allows the Application to be reviewed under the MPDU optional method development standard. Further, the Clarksburg East Environmental Overlay Zone also allows a maximum density of 3.66 dwelling units per acre with MPDU bonus density (Sect. 4.9.5.D.5b). The Applicant is requesting 3.59 dwelling units per acre which is less than what is allowed and therefore, the Application meets the density requirement.

2. The Preliminary Plan substantially conforms to the master plan;

The Preliminary Plan substantially conforms to the recommendations outlined in the 2014 *Ten Mile Creek Area Limited Amendment* ("Master Plan"). The Master Plan is a limited amendment to the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* ("1994 Plan") for the Ten Mile Creek Watershed. The Master Plan retains the 1994 Plan vision but refines the 1994 Plan recommendations to create a well-defined corridor town that provides jobs, homes and commercial activities and the preservation of natural resources. Below is a discussion of the various Master Plan recommendations.

Land Use, Zoning & Property Recommendations

The development is consistent with the land use, zoning and property recommendations outlined in the Master Plan. The Master Plan demonstrates that parkland is recommended on the Western Parcel (Master Plan, p. 50) and the Application includes conveying the +/-39.9 acre Western Parcel to M-NCPPC Parks for future parkland which is consistent with the Master Plan. The Master Plan also recommends residential development for the Eastern Lot. The proposal replaces the existing commercial use with a residential development which is consistent with the Master Plan's land use recommendation. The Master Plan also provides specific Property recommendations listed below (Master Plan, p. 36).

- *Include this property in proposed Clarksburg East Environmental Overlay Zone with a 15 percent imperviousness limit and an 80 percent open space requirement.*

The Master Plan did not consider the portion of the Egan property located on the Western Parcel in its property specific recommendations. The development meets the intent of the imperviousness limit as discussed above. The proposal also includes 80.9 percent of rural open space which is above the required amount.

- *Rezone properties to R-90, with a maximum density of three units per acre (approximately a 297 unit limit), or up to 3.66 units per acre with a moderately priced dwelling unit (MPDU) bonus and flexibility regarding unit types and building heights via the overlay zone.*

The Eastern Lot was rezoned to R-90 with an allowed maximum residential density of up to 3.66 units per acre with a moderately priced dwelling unit bonus and flexibility regarding unit types and building heights under the CEE Overlay Zone. The proposal contemplates an MPDU development to build 25 percent MPDUs under the Optional Method Development Standards for a total of 364 housing units which at 3.59 units per acre is slightly less density than the maximum allowed by the Master Plan. The development also includes a mix of townhouses with a maximum height of 50-feet and multi-family units with a maximum height of 65-feet as permitted for properties in the Clarksburg Environmental East Overlay Zone.

- *Use the overlay zone to permit varied unit types, including single-family attached, single-family detached, and multi-family. This Plan recommends that maximum development yields may only be realized with units that achieve higher densities within the smaller developable area established by the imperviousness limit and open space requirement.*

The proposal consists of a mix of townhouses and multi-family units to achieve higher development yields within a limited development area. The development area is limited to approximately 26 acres which is 20 percent of the Application Area for the residential development, and it meets the impervious surface limitations and open space requirement.

Environment, (Master Plan, p. 14-22)

The Application conforms to the Environmental Resources section of the Master Plan. The Master Plan places a high priority on the protection and enhancement of environmental resources, including forest and water quality, with an added emphasis on protecting and expanding environmental buffers. The Master Plan incorporates several recommendations that help to achieve the goal of environmental resource protection, including clustering the development in upland areas, limiting impervious surfaces, expanding environmental buffers to include ephemeral streams, wetlands, springs, seeps, erodible soils, and slopes ≥ 15 percent. In addition, the Master Plan recommends protection of interior forest. As in all Special Protection Areas, any unforested environmental buffers must be reforested.

Development on the Subject Property will be clustered away from the stream valley areas, protecting over 51 acres of existing forest resources, and the Applicant is planting approximately 19 acres of new forest in areas that are currently unforested. Approximately 4.30 acres of environmental buffer cannot be reforested due to existing easements that conflict with tree planting; these areas will be planted as meadow habitat with native species favored by pollinators. While some minor encroachments are within the environmental buffers on the Eastern Lot during construction to allow for safe conveyance for stormwater outfalls and grade tie-outs, these encroachments are within currently unforested portions of the buffers and in areas that will need to be disturbed for the removal of existing structures. The areas disturbed for grade tie-outs and removal of existing structures will be reforested.

Recommendations for Properties East of I-270 (Master Plan, p. 18)

The Master Plan includes several recommendations for properties located east of I-270. Below is a list of these recommendations with discussion on how they are met.

- *Limit imperviousness levels to 15 percent for new development on properties that are recommended for the proposed Clarksburg East Environmental Overlay Zone.* As discussed above, the Application meets the required impervious limits of the CWE and CEE Overlay Zones.
- *Forest Conservation Plans for properties in the Ten Mile Creek Watershed should protect the forest on the Miles/Coppola properties, which is bounded by the two northernmost environmental buffer areas on the north and south, I-270 on the west and the existing agricultural fields on the east.*
This recommendation applies to the Miles/Coppola properties and is not applicable to this Application.
- *Work with the Maryland Highway Administration to provide stormwater retrofits for any expansion or modification of I-270.*
Expansion or modification of I-270 is not anticipated as part of the Application and therefore this recommendation is not applicable.

Property Recommendations West of I-270 (Master Plan, p. 18-19)

The Master Plan includes several recommendations for properties located west of I-270. Below is a list of these recommendations with discussion on how they are met.

- *Reduce the development footprint and impervious cover, emphasizing reduced impacts to upland forested areas and steep slopes. In particular, protect existing stream conditions in the high quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111.*
This Application is not within the LSTM 110 and LSTM 111 subwatersheds. However, the Western Parcel, which is located within the LSTM 201

subwatershed, will be conveyed to M-NCPPC Parks for parkland with limited impervious surface for a driveway and gravel parking lot.

- *Limit imperviousness to six percent of new development on properties recommended for the RNC zone.*

The Subject Property is in the Rural Zone and therefore this particular recommendation is not applicable to this Property. Although the Property is not within the RNC zone, the Western Parcel is located within the Clarksburg West Environmental Overlay Zone which has a six percent impervious surface limit regardless of underlying zoning. The Western Parcel will be conveyed for parkland as an addition to the Ten Mile Creek Conservation Park, with modest public improvements to accommodate parking for 10-12 vehicles. The Western Parcel will also include a driveway entrance at least 20-feet in width with the apron approaching 30-feet in width. As noted previously, the majority of the imperviousness for the Application is on the Eastern Lot, within the CEE Overlay Zone, which the Master Plan notes will have less impact on the watershed since there is already an existing higher level of imperviousness compared to the existing impervious level within the CWE Overlay Zone.

- *No additional impervious cover is recommended for the County-owned properties, except that the impervious surface overlay zone may be amended in the future to allow for a less than one acre expansion of the Correctional Facility.*

This Property is not County-owned and therefore this section does not apply.

Throughout Ten Mile Creek (Master Plan, p. 19-22)

The Master Plan includes additional recommendations for properties to achieve preservation of natural resources. Below is a list of these recommendations with discussion on how they are met.

- *Environmental buffers must be consistent with all regulations and guidelines. In addition, in all areas in Ten Mile Creek other than the Historic District, on both sides of perennial and intermittent streams, and adjacent to springs and seeps, buffers must be a minimum of 200 feet, and must be expanded to include: All erodible soils (listed in the Planning Board's Environmental Guidelines for Development, as amended); Wetlands that extend beyond the buffer must have a minimum 50-foot wetland buffer; All ephemeral streams, not including roadside drainage ditches, plus a 50-foot buffer; All slopes 15 percent or greater that begin within the buffers described above.*

Planning Staff approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 420191590 on December 13, 2019. The NRI/FSD identified all of these required features and conforms to these recommendations. The approved environmental buffers are identified on the Preliminary Forest Conservation Plan submitted as part of this Application.

- *Amend the Clarksburg Special Protection Area to include an additional area east of I-270.*

The limits of the Clarksburg Special Protection Area were amended and the Ten Mile Creek Special Protection Area was created in response to this recommendation. The Subject Property is within the Ten Mile Creek Special Protection Area, with the exception of 1.5 acres located in the northwestern corner of the Eastern Lot, which drains to Little Bennett Creek and is outside of the Ten Mile Creek SPA.

- *Establish environmental overlay zones to apply the Plan's limits on imperviousness for new development and reduce development footprints to protect sensitive resources.*

The Clarksburg East and Clarksburg West Environmental Overlay Zones were created in response to this recommendation. The Overlay Zones incorporate limits on imperviousness and open space requirements. The Subject Property is within the Clarksburg East and Clarksburg West Environmental Overlay Zones that limit imperviousness and requires 80 percent rural open space to protect sensitive resources.

- *Minimize disturbance of natural resources throughout the Ten Mile Creek Watershed, especially forests in the headwater areas. Forest Conservation Plans for properties in the Ten Mile Creek Watershed should protect: All forest required by the Forest Conservation Law and Regulations (includes environmental buffers as previously described and minimum retention requirements), as well as areas defined in this Master Plan; All interior forest (as defined by the Maryland Department of Natural Resources); On the Miles-Coppola properties, the forest bounded by the two northernmost environmental buffer areas on the north and south, I-270 on the west, and the existing agricultural fields on the east; On the Pulte/King properties, all forest adjacent to environmental buffers; All forest on County-owned properties.*

The Preliminary Forest Conservation Plan submitted with this Application demonstrates conformance with the forest conservation law, which is further discussed below, and regulations and protects interior forest. The Application protects approximately 71 acres of existing and planted forest through dedication to M-NCPPC Parks or conservation easements.

- *Explore ways to create incentives for additional voluntary forest planting (using forest banks or other strategies) on rural or RDT-zoned properties in the Ten Mile Creek Watershed to help reach a watershed goal of 65 percent forest cover.*

The Western Parcel, zoned Rural, will not be developed, but conveyed to M-NCPPC Department of Parks as an addition to the Ten Mile Creek Conservation

Park. The unforested portions of this Parcel are areas encumbered by an existing utility right-of-way and are unable to be reforested. All existing forest on this Parcel will be retained. Approximately 19 acres of new forest will be planted on the Eastern Lot, including areas as a forest bank, assisting with achieving a watershed goal of 65 percent forest cover.

Water Quality Strategies & Additional Principles/Strategies (Master Plan, p. 21-22)

The Master Plan also includes several water quality strategies and principles listed below.

- *Avoiding overflow discharges onto steep slopes. Ensuring that any overflow occurs as sheet flow to the floodplain and/or receiving streams. Managing discharges from stormwater outfalls using step-pool storm drainage conveyance systems or comparable designs, as appropriate. Minimizing environmental buffer impacts associated with ESD overflow outfalls. Minimizing the need to convey stormwater across steep slopes and forested areas, and ensuring such conveyance is done in a nonerosive manner. Minimize disturbance of natural resources throughout the Ten Mile Creek Watershed, especially forest cover in the headwater areas. Minimize direct impacts associated with new infrastructure, such as the MD 355 bypass and the sanitary sewer extension on natural resources. Minimize grading the thin and rocky soils in Ten Mile Creek, which helps sustain groundwater flows to the many springs and seeps. Indicate the importance of limiting grading and soil compaction as much as possible through creative site design and development staging. New development must employ planning and zoning options and design techniques that minimize impervious cover, including: Cluster development with smaller building footprints on smaller lots with shorter driveways; Place houses near the front of a building envelope to reduce driveway length, and provide shared driveways, where feasible; Design narrower streets with limited sidewalks; Use vegetated swales to guide runoff toward ESD facilities or pervious areas instead of curbs and gutters on secondary streets unless they conflict with other requirements; Limit impervious cover for cul-de-sacs by reducing curve radii and having a green space in the turn-around area; Preserve land with a high infiltration capacity to be used for storm water infiltration or natural recharge area. Maintain natural drainage patterns, especially around zero order streams by: Preserving and designing around ephemeral streams within the limits of disturbance, as much as possible; Maintaining existing natural topography and vegetation within ephemeral streams; De-compacting and amending soils within the limits of disturbance with organic matter to a greater depth than currently required (this measure would be determined by the Department of Permitting Services as part of development plan and approvals. Environmental Site Design (ESD) – As a first step, apply appropriate ESD site planning techniques within proposed development areas to maximize environmental benefits; Site planning and design must be guided by and integrated with the selection and appropriate location of ESD practices to*

achieve the greatest watershed benefits based on an evaluation of specific site and subwatershed considerations; To the extent feasible, ESD practices should minimize the concentration of flows through sheet flow and dispersion and must ensure any such conveyance is done in a non-erosive manner. Require restoration of streams and wetlands adversely affected by existing uses after all development is completed in the drainage area so as to allow the hydrology to adjust to the new landscape.

Development is limited to the Eastern Lot and the Western Parcel will remain undeveloped and conveyed for parkland. In general, the Application addresses the Master Plan recommendations listed above. The majority of these items related to sediment control and stormwater management will be reviewed by MCDPS as part of the Final Water Quality Plan, and for the disturbed areas and storm drain/ESD outfalls, during MCDPS' detailed plan review stage for the sediment control and stormwater management plans. Staff from MCDPS Water Resources has confirmed that this Application is effectively maintaining existing draining areas, with only relatively small areas being directed away from their existing drainage course. This is a standard requirement of all SPA water quality plans. Although the State no longer requires limiting the grading units to a 20-acre maximum, MCDPS continues to require that sediment control plans adhere to these restrictions. Therefore, this Application will be required to be phased so that only 20 acres (a grading unit) at a time will be actively disturbed. When this grading unit is 50 percent complete and stabilized, the next grading unit can be opened. This will limit active grading to no more than 30 acres at one time.

The Master Plan references requirements for de-compaction and soil amendments. Although the Master Plan language is vague on specifics, MCDPS recommends that in order to comply with the intent of the Master Plan recommendation, the Planning Board require that the Applicant follow the Maryland Department of the Environment (MDE) requirements for soil preparation, top-soiling and soil amendments, but provide soil loosing and fertilizing to 6-8 inches and a minimum of an eight-inch layer of topsoil for any graded areas of 1,000 square feet or more that will be vegetated with grass. Therefore, as conditioned, these requirements exceed the MDE standards which require 3-5 inches of soil loosing and 5-8 inches of topsoil for graded areas greater than five acres. This increased soil amendment strategy will serve to maintain the infiltration capabilities of the soil, promote more vibrant plant growth, and reduce runoff.

The Application includes a Preliminary Stream and Wetland Restoration Plan that identifies areas that have been adversely affected by the past uses that occurred on the Property. As conditioned, a Final Stream and Wetland Restoration Plan will be reviewed by Staff from the M-NPCC Planning

Department and Department of Parks, and MCDEP as part of the Site Plan application.

The development has been designed to cluster development primarily in unforested areas, protect the environment and reduce impervious area. The design also meets the recommendations listed above to protect and preserve the natural resources throughout the Ten Mile Creek by 1) clustering the development on a smaller building footprint on smaller lots with shorter driveways, 2) locating houses near the front of a building envelope to reduce driveway length, and 3) designing narrow streets in select areas.

Rural Open Space Requirements and Design Guidelines, (Master Plan, p. 42-44)

The Master Plan also provides a number of Rural Open Space Design Guidelines listed below for development located West of I-270, which includes the Western Parcel. The Application does comply with this portion of the Master Plan as described below.

- *Include all land meeting the Environmental Buffer requirements, as well as forest protection, listed on page 19;*
As discussed above, the Western Parcel will be conveyed as an addition to the Ten Mile Creek Conservation Park, adequately protecting the forest and environmental buffers.
- *The neighborhood park recommended for this portion of the watershed maybe wholly or partially within the rural open space; Dedicate most of the rural open space as parkland.*
The neighborhood park is not recommended on the Subject Properties; therefore, this recommendation is not applicable to this Application. As noted above, this Application includes land conveyed as an addition to the existing Conservation Park.
- *Concentrate cluster development in unforested upland areas; wooded stream valleys should be left intact, undeveloped, and in their natural states as rural open space;*
There is no development on the Western Parcel, therefore, all stream valleys will be left intact, undeveloped, and in their natural state as part of the Conservation Park.
- *Reduce environmental impacts and imperviousness during development by applying ESD techniques;*
As noted above, the Western Parcel will be conveyed and maintained as a Conservation Park, with impervious surfaces limited to approximately 7,500 square feet to accommodate a driveway access and small gravel parking area.

- *Require a conservation management plan for areas outside the limits of disturbance that are not dedicated to M-NCPPC for parkland or placed in a rural open space easement if such areas are located in a development plan. The conservation management plan should be coordinated with the Planning Department, the Department of Parks, and the Department of Environmental Protection to address management of natural resources, preservation of pervious land cover, and compatibility with adjacent land uses (both Parks and development area). This conservation management plan must be approved as part of the preliminary plan for the site.*

As discussed above, the Western Parcel will be conveyed to M-NCPPC for parkland; therefore, a conservation management plan is not required.

- *Direct new sewers away from Ten Mile Creek, utilizing proposed and existing roads; pump stations may be required to make connections to sewer lines in Cabin Branch;*

The development is located on the Eastern Lot which includes a pump station that will be constructed by the Applicant to direct new sewers away from the Ten Mile Creek or cross its tributaries.

- *Incorporate open space into the clustered community to provide residents with recreational opportunities;*

As noted above, the Western Parcel will be conveyed and maintained as a Conservation Park. The clustered community is located on the Eastern Lot and as discussed above; it includes internal open space areas that will provide recreational opportunities.

- *Provide access from public roads within a development to the proposed Ten Mile Creek Conservation Park to facilitate the creation of trailheads for natural surface trails and allow park maintenance access.*

The western Parcel will be conveyed and maintained as a conservation park located directly along Comus Road and therefore will have direct access from a public road. Further, as conditioned the Applicant will provide improvements on the conservation park for public access to the parkland.

Legacy Open Space, (Master Plan, p. 48)

Montgomery County preserves its most significant undeveloped open space through its Legacy Open Space program. The 2001 Legacy Open Space Functional Master Plan identifies natural resources, open space, farmland, and historic places that can be conserved through a variety of protection tools, including easements, protection through the regulatory process and, when appropriate, acquisition. The Master Plan includes the Special Protection Area of the Ten Mile Creek Watershed as a Natural Resource site that meets Legacy Open Space criteria and the development is consistent with the Legacy Open Space Master Plan designation.

- *Designate the high quality, critical forest and open habitats that protect the quality of the Ten Mile Creek headwaters as a Legacy Open Space Natural Resource site (Class II). Approximately 1,230 acres are proposed for designation (see Map 11).*

The Application conveys +/-39.9 acres of forest and forest and meadow habitat to the M-NCPPC Department of Parks and protects additional areas as part of a Category I Conservation Easement.

- *Protect the designated Natural Resource on an individual property basis using a variety of tools, which may include easements, dedication through the development review process, and fee simple acquisition.*

The protection techniques above are being used and protect critical resources associated with the development.

- *Land unavailable through dedication during the development review process may be acquired by the Department of Parks.*

The development provides a core area for the Ten Mile Creek Stream Valley Park/Conservation Park - critical platforms for habitat, water quality and resource-based recreation.

Parks and Trails, (Master Plan, p. 48-51)

The 1994 Clarksburg Master Plan created a park and open space system that designated general locations for new local parks serving Clarksburg's developing neighborhoods. Importantly, the 1994 Plan also made provisions for connections between these local parks and the greenway network as prominent components of its overall vision. However, since park planners did not anticipate the significant development west of I-270 that was ultimately approved as part of the 1994 Plan, no local park was included in the Ten Mile Creek Watershed. The Master Plan now calls for the following:

- *Provide a countywide natural surface trail, designed to M-NCPPC Montgomery Parks standards, in the Ten Mile Creek area linking Little Bennett Regional Park and Black Hill Regional Park per the Countywide Park Trails Plan (2008) and the 1994 Clarksburg Master Plan.*

The Application provides a major portion on the west side of Interstate 270 to facilitate a natural surface trail connection linking Little Bennet Regional Park and Black Hill Regional Park and therefore complies with this portion of the Master Plan. The Master Plan also shows a park area for future conveyance on the Eastern Lot. As conditioned, the Applicant will place all conservation easements associated with the northern tributary into a separate parcel so that M-NCPPC Parks Department may pursue transfer, with area to be limited to conservation parkland if determined necessary for a future greenway or trail connection in the future. This request is consistent with the master plan.

- *Provide five trailheads, designed to M-NCPPC Montgomery Park standards, to access the Ten Mile Creek natural surface trail and nearby natural areas for park users and operations staff.*

This recommendation is not applicable to the Subject Properties.

Noise Guidelines

The Environmental Section of the 1993 General Plan Refinement for Montgomery County contains multiple objectives directing the Planning Board to protect future residents from unacceptable noise levels. The *1983 Staff Guidelines For the Consideration of Transportation Noise Impacts In Land Use Planning and Development* ("Noise Guidelines") contains strategies for mitigating the impact of transportation noise on new residential development. Since this Application does not propose any development on the Western Parcel, this discussion is only applicable to the Eastern Lot. Map 2-1 in the Noise Guidelines indicates approximately two-thirds of the Eastern Lot closest to I-270 is within the 60 dBA Ldn guideline and the remaining area closest to MD 355 within the 55 dBA Ldn guideline area, based on the nature of development in Clarksburg in 1983. However, Table 2-1 on page 8 of the Noise Guidelines provides additional guidance for determining the appropriate thresholds for exterior noise (see Table 2 below). This guidance suggests that areas that are urban, adjacent to freeways, major highways or corridor areas are more appropriately reviewed with a 65 dBA Ldn noise guideline.

Table 2 – Maximum Levels for Exterior Noise at the Building Line

MAXIMUM LEVELS FOR EXTERIOR NOISE AT THE BUILDING LINE ¹ FOR NOISE-SENSITIVE LAND USES	
<u>Guideline Value</u>	<u>Area of Application (see Map 6-1)</u>
$L_{dn} = 55$ dBA	This guideline is suggested as an appropriate goal in permanent rural areas of the County where residential zoning is for five or more acres per dwelling unit and background levels are low enough to allow maintenance of a 55 dBA level. This guideline is consistent with Federal, State, and County goals for residential areas.
$L_{dn} = 60$ dBA	This is the basic residential noise guideline which will be applied in most areas of the County where suburban densities predominate. Maintenance of this level will protect health and substantially prevent activity interference both indoors and outdoors. Noise attenuation measures will be recommended to allow attainment of this level.
$L_{dn} = 65$ dBA	This guideline will generally be applied in the urban ring, freeway and major highway corridor areas, where ambient levels are such that application of a stricter guideline would be infeasible or inequitable. Significant activity interference will occur outdoors and indoors if windows are partially opened, but available evidence indicates hearing is adequately protected. Noise attenuation measures will be strongly recommended to attain this level.

The areas where these exterior guideline values would apply are shown on Map 2-1. This map should be used for general reference purposes only. Recommended exterior noise levels shown for specific areas in subsequent sector and master plans may differ from Map 2-1 due to updated, more detailed traffic information for existing and future

The Applicant submitted a Noise Analysis that concludes that the development will be exposed to noise levels above 65 dBA Ldn and up to 73 dBA Ldn. The noise levels generated by I-270 will exceed 65 dBA Ldn at the ground level of 53 rear yards. In addition, 117 townhomes will be exposed to roadway noise levels above 65 dBA, which correlates to interior noise levels in excess of Montgomery County’s residential 45 dBA Ldn indoor noise level requirement.

A Barrier Analysis was provided to determine the mitigation necessary to offset the projected noise levels. The Barrier Analysis contemplates using the daytime average (Leq) rather than the day-night average (Ldn) noise levels stipulated in the Noise Guidelines under the premise that individuals will not be using their outdoor areas at night. The Planning Board does not support this approach as using the Ldn accounts for the added sensitivity of noise during the evening hours and an assumption that individuals will not use their outdoor spaces at night is not valid. The Noise Guidelines specify the use of Ldn for evaluating noise impacts for residential areas. The mitigation required to meet the 65 dBA Ldn for outdoor areas will require noise barriers ranging from 6-14 feet in height located at the rear of the townhouses in the western portion of the Eastern Lot, including those parallel to I-270 and many that are perpendicular to I-270. Given the extent and the height of the required barriers, the Applicant has submitted a waiver request to allow the use of the 70 dBA Ldn noise level for this Application.

Noise Waiver Request

Section 2.2 of the Noise Guidelines allows the Planning Board to waive part or all of the guidelines “if use of all feasible exterior attenuation measures cannot protect noise sensitive rooms on upper floors or outdoor patio areas, or if exterior attenuation is not feasible. Exterior noise attenuation measures may be infeasible due to economics, aesthetics, or site-related constraints of size, shape, or topography”. The Applicant requests the use of the 70 dBA Ldn noise level for this Application given the proximity to I-270, topographic constraints, and the economic and aesthetic impacts of meeting the 65 dBA Ldn level. Adherence to the 65 dBA Ldn level will require noise barriers ranging from 6-14 feet in height that will effectively block the views and access from many homes to the Master Plan required rural open space areas. The Application provides additional open space areas for recreation interior to the site that will not be impacted by noise. If the Applicant were permitted to use the 70 dBA Ldn noise level for the outdoor spaces, the noise barriers would be limited to the homes parallel to I-270 and would range from 7-9 feet in height. The homes to the north and south would not require any barriers, allowing greater visual and physical access to the rural open space areas. Given the proximity of these homes to I-270 and the difficulty in mitigating the noise without essentially “boxing in” many of the homes and cutting them off both visually and physically from enjoying the rural open space, the Planning Board supports the Applicant’s request for a waiver from the Noise Guidelines, to allow the use of the 70 dBA Ldn for the outdoor activity areas for this Application.

The interior spaces will be required to meet the 45 dBA Ldn requirement, which will be evaluated in more detail with the Site Plan. Typically, mitigation through the use of varied construction materials provides adequate mitigation for indoor spaces impacted by transportation related noise.

As conditioned, the Planning Board supports the mitigation measures by the Applicant and approves the waiver.

Transportation, (Master Plan, p. 24-30)

The transportation analysis is provided in the subsequent section.

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

Other than the Schools Test, the full Preliminary Plan build-out (364 units) satisfies the Adequate Public Facilities review as explained below.

Transportation

Transportation circulation throughout the Subject Property will be adequate to support and service the development. The Subject Property has frontage on two public roads – Frederick Road and Comus Road. However, access for all new

development will come from two new entrances along Frederick Road. An additional access point will be provided along Comus Road to accommodate public entry to the western parcel which will be dedicated to M-NCPPC Parks.

Master Planned Roadways and Transitways

The Eastern Lot of the Subject Property is accessed via two entrances along Frederick Road, identified in the 2018 *Master Plan of Highways and Transitways* as a two-lane arterial road accommodating a two-lane dedicated Bus Rapid Transit (BRT) busway with a 130-foot right-of-way. Earlier plans had envisioned the master-planned Clarksburg Bypass potentially traversing the Subject Property. However, the 2014 *Ten Mile Creek Area Limited Amendment* updates that guidance by recommending that the bypass be constructed approximately 1/3 of a mile to the south on Frederick Road, beyond the property boundary, in order to reduce the impact to two streams to the south. It should be noted that while the roadway is planned to accommodate future BRT, to date there are no plans for implementation. Current active plans for both the Corridor Cities Transitway as well as the MD 355 'Flash' BRT terminate well to the south of the Subject Property.

The earlier 2001 plat for the Subject Property placed a large transit easement along the frontage along Frederick Road of variable width that in places exceeds 100 feet in width to accommodate a variety of transit scenarios, including rail. The Applicant requested to reduce the size of the easement in order to increase the amount of the Subject Property that can be dedicated as rural open space. Following discussions with long-term transit planning staff at MCDOT, the Planning Board determined that the majority of the easement was unnecessary to support future BRT extension scenarios. The Application reduces but does not eliminate the use of a transit easement, with most of the reduction occurring along the southern 2/3 of the property. The northern wedge on the northeast corner, curving from Frederick Road, is retained in order to facilitate future potential access to I-270. Acknowledging that the exact alignment of a busway in such a scenario is uncertain, but unlikely to require the full use of that portion of the easement, the Planning Board accepted that an excess area of the easement beyond an estimated 50-foot-wide busway along the length of the wedge, for illustration purposes only) can be credited as rural open space. It should be noted that this finding does not encumber the easement, with the rural open space retained as a condition of approval for the overall Subject Property.

The adjusted transit easement will fully accommodate future BRT. The Subject Property will facilitate the long-term master-planned vision for Frederick Road as a 130-foot ROW Arterial Road with BRT by providing a minimum combined 90-feet of width of both right-of-way dedication (minimum 40-feet) and transit easement (minimum 50-feet), as measured from the centerline of Frederick Road.

The existing PUE is placed between the transit easement and the ROW of Frederick Road. As conditioned, the PUE is to be moved to the exterior perimeter of the transit easement between the easement and the Subject Property. The PUE as conditioned will accommodate utilities in a location that will not impact the placement of future transit service as they are to be placed outside the ROW and the transit easement.

The Western Parcel of the Subject Property has limited frontage on Comus Road identified in the 2018 *Master Plan of Highways and Transitways* as a two-lane arterial road with an 80-foot ROW. Additional dedication totaling 40-feet from the centerline of the road will be provided by this Application in support of the ROW requirement. Public access to the Western Parcel and the planned park facility will be accommodated via an entry point along this narrow frontage along Comus Road.

Master Planned Bikeways

The 2018 *Bicycle Master Plan* recommends a 10-foot wide asphalt shared use path along the west side of Frederick Road from the north of the intersection with Snowden Farm Parkway. The *Bicycle Master Plan* also recommends, due to the high speeds at and above the posted speed limit of 40 miles-per-hour experienced along Frederick Road, 6-foot-wide bikeable shoulders should be provided along the road where shoulders are absent. Both facilities serve a unique user base, with the shared use path intended for a mix of pedestrians and casual cyclists and the bikeable shoulders intended for higher-speed, performance cyclists who would rather ride on the road. Further, the provision of a shoulder is standard feature for SHA highways necessary for safe operation of motor vehicles, emergency responders and ongoing maintenance. However, the Applicant will provide a contribution in lieu of constructing these facilities, with the sum amounting to the full cost of construction to be provided to the Montgomery County Department of Transportation as part of a road participation agreement for eventual implementation. These funds will fully support the extension of the currently under construction, publicly funded Frederick Road Bike Path which at present terminates at Snowden Farm Parkway (Site Access 1). Any future construction will be publicly constructed and implemented by MCDOT and/or MDSHA. As mentioned, the revised PUE as conditioned will accommodate future utilities in a location that will not impact the bike, pedestrian, road, and transit facilities as detailed previously.

Signal Improvement

As conditioned, a traffic signal will be constructed by the Applicant prior to the release of the 270th building permit at the south entrance along Frederick Road at its intersection with Snowden Farm Parkway. Currently, the 3.5-mile segment of Frederick Road fronting the Eastern Lot is unsignalized between Old Hundred Road in Hyattstown to the north and Clarksburg Road to the south, limiting bike and pedestrian movement within the Clarksburg Town Center Bicycle and Pedestrian Priority Area. Additionally, the master-planned Frederick Road shared use path is intended to cross Frederick Road from the east side below the intersection to the

west side above the intersection (the west side is master planned in accordance with the design of the recently reconstructed bridge over Little Bennett Creek Bridge to the north). The implementation of a signalized crossing is necessary to support safe crossing of this high-volume and high-speed road in anticipation of high usage by the new residents of the walkable community. In tandem with this Application, discussions are ongoing with the State Highway Administration to lower the speed limit of Frederick Road in the immediate vicinity.

In addition to the need for signalization to support bike and pedestrian movement, signalization is anticipated to support the completion of Snowden Farm Parkway within the development horizon of this Application.

While the intersection does not meet signal warrants as detailed in the Transportation Study, which only anticipates the addition of approved background and site generated trips, it is expected that the completion of Snowden Farm Parkway as a major arterial road and spine for much of the recent development in Clarksburg will shift travel patterns and dramatically increase traffic volumes through this intersection. Full signalization is supported by the Planning Board, MCDOT and MDSHA. Lengthy discussion with SHA staff in particular resulted in the conclusion that the agency would support signalization even without meeting warrants for the reasons outlined above, and it is understood that the agency will accept the signal as conditioned. Moreover, the intersection can only function safely with a signal as standard acceleration and deceleration lanes have been eliminated, foremost to reduce the cross-section of the road for bike and pedestrian safety as well as to reduce impervious surface in the 10 Mile Creek SPA.

Subdivision Streets

The Project will establish a semi-regular street grid in two large nodes that promotes a denser, urban-inspired development pattern that reduces impervious surface. All roads, including alleys, will be private streets and modified from typical public street sections to limit impervious surface. All streets will be placed in private HOA-maintained parcels and governed by the standard private roads covenant. Two new intersections will connect the community to Frederick Road at Florence Street to the north, and Snowden Farm Parkway to the south. The intersection at Snowden Farm Parkway will be signalized in anticipation of the eventual completion of Snowden Farm Parkway that will serve as an eastern vehicular bypass of the Clarksburg Historic District. In addition to the conditioned future traffic signal at the intersection of Snowden Farm Parkway and Fredrick Road, which will improve vehicular movement, signalization will support bike and pedestrian movement across Frederick Road which currently has no signalized crossing for nearly a mile.

Streets A and B serve as the main spine roads for the Subject Property, providing access to Frederick Road. Both will be constructed as modified secondary streets,

though with a reduced cross section and reduced ROW that ranges from 50-54 feet in width. These modifications reduce impervious surface in comparison to the typical section. As discussed in detail below, portions of the street network will limit sidewalks to one side of the road.

Sidewalks

The Master Plan recommends reducing road width as well as limiting sidewalk construction as one of the ways to limit additional impervious surface. As part of this overall Application, the Planning Board has sought to reduce impervious surface wherever possible, through all transportation modes and through other design features. The Applicant therefore proposes to reduce sidewalks to one side in select areas of roadway in areas thought to carry less pedestrian traffic. This includes limiting sidewalks to the innermost side of the 'loop' road, Street A, ringing the central open space, to accommodate pedestrians exiting adjacent visitor parking. This side was additionally preferred as it is less impacted by curb cuts from driveways along with conflicts from vehicles entering and exiting homes. Sections with one-sided sidewalk will have that sidewalk constructed to a slightly wider 6-foot-wide standard. This condition, also shared with Street B and Street E.

Nevertheless, pedestrian connectivity is provided along all roads and mews and will connect to Frederick Road. However, it should be noted that following review, both the Department of Permitting Services and Montgomery Department of Transportation disagree with limiting sidewalk to one side of these streets, which is non-standard, particularly for townhouse developments. Both agencies instead recommend the use of sidewalks on both sides of the street throughout the development.

Due to the impervious surface limits, balance must be taken in all areas of the Application to reduce impervious surface through all aspects of the Site, including the limitation of imperviousness through new roadways. However, three additional sidewalk sections are needed to improve safety on the Site. As conditioned, the Site Plan for this application must include these sidewalks to improve safety. The three segments include 1) Street A along on-street parking that front Lot No. 240 – Lot 255, 2) Street A along on-street parking that front Lot No. 310 – Lot 322, and 3) Street E along on-street parking that front Lot No. 40 – Lot 49. Although a sidewalk is along the street, these sidewalks are setback 32-40 feet from the curb and on-street parking spaces and stormwater management facilities separate these sidewalks from the street, limiting access. By locating the sidewalk closer to the units and away from the streets, this sidewalk does not effectively accommodate pedestrian, and specifically ADA, access, and circulation from the street, specifically from parked cars. Further, the sidewalk serves primarily as access for the individual townhomes and diminishes the intent to serve the community at large as a public amenity. Therefore, as conditioned, the additional sidewalk segments must be provided.

Local Area Transportation Review (“LATR”)

The Application for 364 new dwellings (322 new townhouses and 42 new low-rise multi-family units) is predicted to generate 251 and 220 net new person trips during the AM and PM peak-hours respectively as shown in Table 3 below. As the Application generates more than 50 peak-hour person trips, a full traffic study was required to satisfy the LATR guidelines.

*Table 3 – Trip Generation**

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
322 Townhomes / 42 Multifamily Units (ITE 220)	364 d.u.	37	125	162	117	69	186
Existing Caterer	Existing Approval	--	--	--	(28)	(16)	(44)
Net New Vehicle Trips	–	37	125	162	89	53	142
Net New Person Trips	–			251			220

*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. Source: The Traffic Group, Traffic Impact Analysis Dated Feb. 17, 2020.

The Traffic Study was submitted on November 5, 2019 and revised February 17, 2020. Four existing intersections with Frederick Road were studied at Comus Road, Florence Street (N. Site Access), Snowden Farm Pkwy (S. Site Access) and Clarksburg Road to determine whether they met LATR congestion standards (Table 4). The Clarksburg Town Center Policy Area is a designated orange policy area, for which the HCM methodology is used. The Study assumes the implementation of minor intersection improvements approved for the Frederick Road / Clarksburg Road intersection.

Table 4 – Highway Capacity Manual Methodology - Seconds of Vehicle Delay

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Clarksburg Town Center Policy Area (HCM 63 Seconds)</i>						
1. Frederick Rd. & Comus Rd.	2.5	2	2.6	2.1	2.6	2.1
2. Frederick Rd. & Florence St. /	0.2	0	0.2	0	2.4	0.5

N. Site Access						
3. Frederick Rd. & Snowden Farm Pkwy / S. Site Access	0.7	0.6	0.7	0.6	2.3	1.6
4. Frederick Rd. & Clarksburg Rd.	30.2	42.7	28.0	35.0	28.2	37.0

All four intersections operate below congestion standards and no improvements are necessary.

Overview and Applicable School Test

The Application will come before the Planning Board on January 21, 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 proposes 322 single-family attached units and 42 multi-family low rise units. The Application is served by Clarksburg Elementary School, Rocky Hill Middle School and Clarksburg 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 5. 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
Clarksburg ES ¹²	311	282	90.7%	+29	No UPP	114	131	144
Rocky Hill MS	1,020	976	95.7%	+44	No UPP	170	248	401
Clarksburg HS	2,034	2,455	120.7%	-421	Tier 2 UPP			291

To calculate the number of students generated by the development, 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 322 single family attached units and 42 multifamily low-rise units, the Application is estimated to generate the following number of students based on the Subject Property’s location within a Turnover Impact Area:

¹² Projected enrollment reflects the estimated impact of CIP project P651901, which will reassign students among Clarksburg ES, Capt. James E. Daly ES, Fox Chapel ES, Wilson Wims ES and Clarksburg ES #9 in 2023.

Table 6. 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	0	0.198	0.000	0.112	0.000	0.156	0.000
SF Attached	322	0.230	74.060	0.120	38.640	0.157	50.554
MF Low-rise	42	0.124	5.208	0.063	2.646	0.073	3.066
MF High-rise	0	0.023	0.000	0.013	0.000	0.019	0.000
TOTALS	364		79		41		53

On average, this residential development is estimated to generate 79 elementary school students, 41 middle school students and 53 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 5, therefore split payments across multiple UPP tiers are not required.

Based on the school capacity analysis performed, using the updated FY2021 Annual School Test, this Application should require a Tier 2 High School Utilization Premium Payment for each unit. However, Section S3.2.1 of Council Resolution 19-655 (the adopted 2020-2024 Growth and Infrastructure Policy) exempts projects from all Utilization Premium Payments if the preliminary plan application was filed prior to February 26, 2021 and the project includes 25% affordable units. Having met these conditions, the Applicant is not required to make any Utilization Premium Payments.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the use on the Property. The Eastern Lot is located in the W-3 and S-3 water and sewer categories for service and the development plans for the extension of water and sewer lines to utilize public water and sewer. A pump station will be constructed by the Applicant to support public water and sewer. Other telecommunications and utility companies reviewed the Preliminary Plan and found that the development can be adequately served. The Preliminary Plan has also been reviewed by the Montgomery County Fire and Rescue Services who have determined that the Application provides adequate access for fire and emergency vehicles. Other public services such as police and health services are currently operating within the standards set by the Subdivision Staging Policy in effect.

APF and Plan Validity

The Planning Board supports the Applicant’s request for a maximum APF and Plan Validity Period of 10 years for the multi-phased project as defined by 50.4.2.G.2.b and 50.4.3.J.7. The phasing schedules required by these sections for both Plan Validity and APF are below as well as provided in the Conditions of Approval.

Table 7 – Plan Validity Phasing Schedule (As Conditioned)

Phase	Duration of Phase	Time Elapsed Since Adoption
Phase I, Site Plan Submission	36 months (3 years)	36 months (3 years)
Phase II, 4 Lots	12 months (1 year)	48 months (4 years)
Phase III, 60 Lots	24 months (2 years)	72 months (6 years)
Phase IV, 183 Lots	36 months (3 years)	108 months (9 years)
Phase IV, All Remaining Lots	12 months (1 year)	120 months (10 Years)

Table 8 – APF Validity Phasing Schedule (As Conditioned)

Phase	Scale (Cumulative)	Required Improvement	Duration of Phase	Time Elapsed Since Adoption
Phase A	25 Dwelling Units	--	60 months (5 years)	60 months (5 years)
Phase B	183 Dwelling Units	--	48 months (4 years)	108 months (9 years)
Phase C	All Remaining Development (364 Units)	Signal at Snowden Farm Parkway (at 270 th Building Permit) Pump Station	12 months (1 year)	120 months (10 years)

In this instance, the Applicant is requesting the maximum APF validity period of 10 years, and justifies their request based on the requirement to construct a pump station on the Subject Property, a complex project with a timeline that is not within the full control of the Applicant. Occupation of homes cannot begin until the pumping station is operating. Additionally, the Planning Board agrees that the development is large, complex and that the market is an unknown force in developing the Property. The APF validity schedule as conditioned is altered from the request made by the Applicant, specifically by advancing development from Phases C and V of the APF and Plan validities respectively into earlier Phases B and IV of the APF and Plan validities respectively. This is done to better spread development, encourage more rapid development, while discouraging a prolonged hold on scarce public facility resources. The nine-year duration of Phases B of the APF and Phase IV of the Plan as measured from the Initiation Date of the Plan is adequate to accomplish the scale of development approved up to that point.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied;*

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of subject trees. The Preliminary Plan complies with the Montgomery

County Environmental Guidelines, the Limited Amendment Master Plan, and the Forest Conservation Law, as conditioned in the Staff Report and described below.

Environmental Guidelines and Limited Amendment Master Plan

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420191590 for this Property was approved on December 13, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Limited Amendment outlines additional requirements for the protection of environmental resources beyond what is outlined in the *Environmental Guidelines, Guidelines for Environmental Management of Development in Montgomery County* ("Environmental Guidelines"). The guidance in the Limited Amendment requires a minimum of 200-foot buffers for all intermittent and perennial streams, springs and seeps and expansion of these buffers to include ephemeral streams and their 50-foot buffers, wetlands with a minimum 50-foot buffer (which may be larger based on the SPA wetland buffer guidance in the Environmental Guidelines), erodible soils as defined in the Environmental Guidelines, and ≥ 15 percent slopes that begin within the buffers. The NRI/FSD for this Property was prepared, reviewed, and approved using the guidance outlined in the Environmental Guidelines, and where necessary, superseded by the guidance outlined in the Limited Amendment.

Eastern Lot

The undeveloped portions of the Eastern Lot are a mix of forest, scattered trees, meadow, and turf, including approximately 25 acres of existing forest, 3.88 acres of wetlands, a farm pond, and 35.6 acres of environmental buffer. There are existing structures associated with old homesteads as well as the most recent use as a catering and recreational challenge course facility. The majority of this Lot is within the Seneca Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters, and within the Ten Mile Creek Special Protection Area (SPA). Approximately 1.5 acres located within the northwestern corner, adjacent to MD 355 is within the Little Bennett Creek Watershed, which is classified by the State of Maryland as Use Class III-P waters, and outside of the Ten Mile Creek SPA. The Eastern Lot is entirely within the Clarksburg East Environmental Overlay Zone. There are two main tributaries of Ten Mile Creek that flow through the Eastern Lot in a westerly direction before existing the Lot under I-270. These tributaries are identified in the Limited Amendment as LSTM 201 and LSTM 206. Slopes in excess of 15 percent, including slopes ≥ 25 percent are present. No highly erodible soils as listed in the Environmental Guidelines have been identified on the Property. There are no FEMA mapped floodplains on or immediately adjacent to the Lot, but there is M-NCPPC mapped floodplain that has been incorporated into the environmental buffer. Seeps, springs, and ephemeral streams were identified and included within the Master Plan recommended environmental buffer. The NRI/FSD also identified numerous significant and specimen trees.

Western Parcel

The Western Parcel is undeveloped; however, there has been some past encroachments from neighboring properties including some debris in the area near Comus Road that will be removed and restored as part of this Application. The majority of this Parcel is forested with the exception of the existing 150-foot wide utility right-of-way that is maintained in a turf/meadow condition. This Parcel includes approximately 33.5 acres of existing forest, 0.03 acres of wetlands, and 14.5 acres of environmental buffer. This Parcel is within the Seneca Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters, the Ten Mile Creek SPA, and the Clarksburg West Environmental Overlay Zone. The two main tributaries of Ten Mile Creek that flow through the Eastern Lot, LSTM 201, and LSTM 206, continue underneath I-270 and through this Parcel. Slopes in excess of 15 percent, including slopes ≥ 25 percent are present. No highly erodible soils as listed in the Environmental Guidelines have been identified on the Parcel. There are no FEMA mapped floodplains on or immediately adjacent to the Parcel, but there is M-NCPPC mapped floodplain that has been incorporated into the environmental buffer. Seeps, springs, and ephemeral streams were identified and included within the Master Plan recommended environmental buffer. The NRI/FSD also identified numerous significant and specimen trees on this Parcel.

Environmental Buffer Encroachments

The Application proposes some areas of minor encroachment into currently unforested portions of the environmental buffer on the Eastern Lot. No encroachments are on the Western Parcel, other than the existing utility right-of-way that will remain. On the Eastern Lot, there is one area of encroachment within the environmental buffer associated with the southern tributary; a storm drain outfall will impact approximately 0.06 acres of buffer in this area to allow for stormwater to be discharged at a non-erosive velocity. The impacts have been minimized by locating the outfall within an existing stormwater management easement, in an unforested portion of the environmental buffer. Three additional encroachments, totaling 0.24 acres within the environmental buffer associated with the northern tributary on the Eastern Lot. These impacts have been minimized by their locations within areas of the buffer that will already be disturbed for the demolition and removal of existing structures and impervious surfaces, and in unforested portions of the environmental buffer. Two of these encroachments include minor grading and storm drain outfalls and the third is for an additional storm drain outfall. There will be a total of 0.24 acres of environmental buffer encroachment. The 0.16 acre area of temporary grading will be reforested and the remaining 0.08 acres will be within stormwater management easements. These four areas of encroachment within the buffer include the construction of four storm drain outfalls which are necessary to provide safe conveyance of stormwater discharges at non-erosive velocities. The Environmental Guidelines (page 18) allow for "minimized buffer intrusions for construction of non-erosive storm drain outfalls.

“In addition, the Application includes areas of temporary encroachment into portions of the environmental buffer to allow for the demolition and removal of existing structures and impervious surfaces and grade tie-outs. These currently unforested areas will be stabilized and reforested per the details on the Forest Conservation Plan. There may be additional areas of disturbance within the environmental buffer to provide access to and accomplish the stream restoration work recommended in the Limited Amendment to the Master Plan. The limits of disturbance for the stream restoration work will be finalized on the Final Forest Conservation Plan submitted with the Site Plan. The only permanent encroachments in the environmental buffer are for the storm drain outfalls. All other areas will be reforested and protected through Category I conservation easements. The Application proposes to replant the entire environmental buffer and restore sections of stream channel that have been adversely affected by the past land use as illustrated on the Stream and Wetland Restoration Plan. The environmental benefits will mitigate the effects of the stream valley buffer encroachments.

Additional Limited Amendment to the Master Plan Environmental Requirements

- Stream and Wetland Restoration Plan
The Limited Amendment to the Master Plan requires properties to restore streams and wetlands adversely affected by the previous land uses as part of the SPA Water Quality Plan requirements. The Application includes a Preliminary Stream and Wetland Restoration Plan and a final version of the plan will be reviewed as part of the Site Plan application.

As conditioned in this Staff Report, the Application is in conformance with the Montgomery County Planning Department’s Environmental Guidelines and the Limited Amendment Master Plan environmental recommendations.

Forest Conservation

As required by the Forest Conservation Law, a Preliminary Forest Conservation Plan (FCP) for the Property was submitted with the Preliminary Plan. The Application requires two forest conservation worksheets due to the different zoning and corresponding land use categories on the Eastern Lot and the Western Parcel.

The tract area of the Eastern Lot for forest conservation purposes includes the 101.49 acres plus 3.17 acres of off-site disturbance, minus 2.31 acres of land dedication, for a total net tract area of 102.35 acres. The Eastern Lot contains approximately 24.86 acres of existing forest. The FCP proposes to remove 3.70 acres and retain 21.16 acres of forest. This generates a 0.23 acre forest planting requirement as illustrated in the forest conservation worksheet on Sheet 1 of the FCP. Approximately 3.09 acres of the 3.70 acres of forest clearing accounted for in the forest conservation worksheet will not actually be cleared by this Application. However, since this forest is either located within existing easements or ROW and

cannot be protected in a conservation easement, or will no longer meet the definition of forest, it is counted as cleared in the forest conservation worksheet.

Western Parcel

The tract area of the Western Parcel for forest conservation purposes is 39.93 acres. The Western Parcel contains approximately 33.45 acres of existing forest. The FCP proposes to remove 2.91 acres and retain 30.54 acres of forest. This does not generate a forest planting requirement as illustrated in the forest conservation worksheet on Sheet 1 of the FCP. No forest will actually be cleared on this Parcel; however, forest that is located within existing easements or ROW and cannot be considered protected, and a strip of forest located between the ROW and the property line that does not meet the definition of forest on its own, is counted as cleared in the forest conservation worksheet.

Approximately 0.61 acres of forest will actually be cleared as part of this Application. This forest is located on the Eastern Lot and includes a 0.28-acre isolated patch of forest located in the middle of the Lot, west of the Potomac Edison property and a 0.33-acre area in the western portion of the Lot, near I-270. These areas will be cleared for the construction of roads and houses in the development.

The Preliminary Plan is subject to Section 22A-12(f) of the Forest Conservation Law, which requires any development in a cluster or other optional method of development in a one-family residential zone to retain or plant a specified percentage of the Property in forest. For the Eastern Lot, the minimum on-site forest retention must be equal to the conservation threshold. The conservation threshold determined based on the land use category and the acreage of the Property, for this Lot is 20.47 acres. The Application proposes to retain 21.16 acres of forest on the Eastern Lot, thereby complying with this provision of the Forest Conservation Law. For the Western Parcel, the minimum on-site forest retention must be equal to 25% of the net tract area, or 9.98 acres. The Application proposes to retain 30.54 acres of forest on the Western Parcel, thereby complying with this provision of the Forest Conservation Law.

There is a total of 0.23 acres of forest planting required per the Forest Conservation Law, which will be satisfied on-site through reforestation within the unforested environmental buffers. In addition, per the Environmental Guidelines, all properties located within Special Protection Areas are required to reforest any unforested environmental buffers. Any of this forest planting that is not required to meet requirements of the Forest Conservation Law may be used to create a forest bank for use by other properties to meet their forest conservation requirements. Additionally, the Master Plan suggests incentives to encourage additional forest planting on properties in Ten Mile Creek, including creation of forest banking opportunities. In areas within the environmental buffer where trees cannot be planted due to existing easements, including overhead power lines, the Applicant will plant a meadow habitat with native species favored by pollinators. This

Application proposes to plant 19.33 acres of new forest on the Property, when added to the 51.70 acres of retained forest, results in 71.03 acres of protected forest on the Property. Approximately 30.54 acres of the forest will be protected through dedication of the Western Parcel to the M-NCPPC Department of Parks and 40.49 acres will be protected through a Category I conservation easement on the Eastern Lot.

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 ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Trees critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition. An Application that requests a Variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, diameter at breast height (DBH); are part of a historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request

The Applicant submitted a variance request dated October 6, 2020 for the impacts/removal of trees by the Preliminary Plan. The Applicant has requested a variance for the removal of ten (10) trees that are 30 inches and greater, DBH, and to impact, but not remove, one (1) other that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Disturbance by the plan for the removal of existing structures and restoration of these areas required to meet the impervious surface requirements of the Overlay Zone and site grading for the residential units will result in the removal of trees T27, T28, T32, T33, T40, T41, T42, T43, T54, and T55, and impacts to tree T1.

Unwarranted Hardship

Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in an unwarranted hardship. Development on the Property is dictated by the existing site conditions, development standards of the zone, and requirements associated with Master Plan objectives. There are two main tributary streams traversing the Property with additional environmentally sensitive features associated with them, including tributary streams, wetlands, a farm pond, springs, and seeps. The Master Plan requires expanded environmental buffers to protect these features and the water quality of the watershed. The result of the expanded buffers is a limited

developable area located between the two main tributary stream buffers. There are some individual Protected Trees located within this developable area and others located in the stream valleys. Further limiting the developable area is the requirement of the Overlay Zones to limit impervious surfaces. In order to meet the impervious surface limits, the Application includes the removal of existing structures and restoration of these areas to a pervious condition. Some of these structures are associated with old homesteads that have Protected Trees around them. Trees T27, T28, T32, T40, T43, T54, and T55 will be removed due to the impacts associated with the removal of existing structures. Trees T33, T41 and T42 will be removed due to impacts associated with the removal of structures and site grading for the development. Tree T1 will be impacted by the removal of existing structures, but not be removed. If these Protected Trees could not be impacted, the development anticipated by the Master Plan and the Zoning Ordinance would not occur. Given the limited area available outside of the environmental buffers, the steep topography, requirements of the Master Plan, Zoning Code, and other development standards, the Planning Board has reviewed this variance request and finds that there would be an unwarranted hardship if a variance were not considered.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. The Planning Board has made the following determinations in the review of the variance request and the forest conservation plan:

Variance Findings

The Planning Board has made the following determination based on the required findings that granting of the requested variance:

1. *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 and disturbance to the specified trees are due to the development of the Property and the required removal of existing structures. The Property contains numerous large trees located within the developable area of the Site. Granting a variance request to allow land disturbance within the developable portion of the Site and meet the objectives of the applicable Master Plan is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon

existing site conditions, Master Plan recommendations for environmental protection, and the development standards of the zone.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for a variance is a result of the existing conditions and the site design and layout on the Subject Property, and not a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to reforest or plant native meadow species within the currently unforested stream buffers, as well as provide additional mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

Mitigation for Trees Subject to the Variance Provision – There are ten trees for removal in this variance request resulting in 362.5 inches of DBH removed. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 91 inches with the installation of thirty-one 3-inch caliper trees. The Applicant proposes to plant these trees in an area totaling 0.31 acres in size, which will create additional forest on the Eastern Lot. Although these trees will not be as large as the trees lost, they will be planted on the Eastern Lot and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to region. There is some disturbance within the critical root zones of one tree; however, this tree will not be removed, it will receive adequate tree protection measures, the roots will regenerate, and the functions it currently provides will continue. Therefore, no mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist as part of the ePlans review process. As of the date of this Staff Report, the Planning Board has not received a recommendation from the County Arborist.

The Planning Board concludes that the Preliminary Forest Conservation Plan as conditioned, meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law and approves the Preliminary Forest Conservation Plan and associated tree variance, with conditions.

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

The Application meets the Preliminary Water Quality Plan requirements of Chapter 19 of the Montgomery County Code and the requirements of the Clarksburg East and Clarksburg West Environmental Overlay Zones.

Review for Conformance to the Special Protection Area Water Quality Plan Requirements

The Property is located within the Ten Mile Creek Special Protection Area on privately owned property where land disturbance will take place so it is required to obtain approval of a water quality plan under Chapter 19-62(b) of the Montgomery County Code. As part of the requirements of the Special Protection Area Law, a Preliminary SPA Water Quality Plan should be reviewed in conjunction with a Preliminary Plan application. The Final SPA Water Quality Plan will be reviewed in conjunction with the future Site Plan application. Under Section 19-65 of the Code, the Montgomery County Department of Permitting Services (MCDPS), the Montgomery County Department of Environmental Protection (MCDEP) and the Planning Board have different responsibilities in the review of the Water Quality Plan. MCDPS and MCDEP have reviewed and conditionally approved the elements of the Preliminary Water Quality Plan under their purview. The Planning Board's responsibility is to determine if environmental buffer protection, SPA forest conservation and planting requirements, and limits on impervious surfaces have been satisfied.

MCDPS and MCDEP Water Quality Plan Review Elements

In a letter dated October 20, 2020, MCDPS has conditionally approved the elements of the SPA Preliminary Water Quality Plan under their purview with conditions to be addressed with the Final Water Quality Plan review with the Site Plan application.

Site Performance Goals

As part of the Preliminary Water Quality Plan, the following performance goals were established for the Property:

1. Stream/aquatic life habitat protection
2. Maintain stream base flow
3. Protect seeps, springs, and wetlands
4. Maintain natural on-site stream channels
5. Minimize storm flow runoff increases
6. Identify and protect stream banks prone to erosion and slumping
7. Minimize increases to ambient water temperature
8. Minimize sediment loading
9. Minimize nutrient loadings
10. Control insecticides, pesticides, and toxic substances

Per the MCDPS Preliminary Water Quality Plan approval memo, the required goals will be met via microbioretention facilities and stormwater planter boxes.

As discussed above, the water quality plan meets the requirements of Chapter 19 by instituting the highest standards of protection for the development areas, avoiding overflow discharges onto steep slopes, managing discharges from stormwater outfalls at non-erosive velocities, and minimizing environmental buffer impacts associated with ESD overflow outfalls.

Monitoring

The Applicant will pay a stream monitoring fee to MCDPS due at time of detailed sediment control plan submittal and a SPA Best Management Practices monitoring fee to MCDPS due at time of as-built submittal.

Planning Board Water Quality Plan Review Elements

The Planning Board approves the elements of the SPA Preliminary Water Quality Plan under its purview.

Environmental Buffer Protection

NRI/FSD No. 420191590 for these Properties was approved by Staff on December 13, 2019. The approved NRI/FSD incorporates the expanded environmental buffer requirements outlined in the Limited Amendment Master Plan. The Application proposes some areas of minor encroachments into currently unforested portions of the environmental buffer on the Eastern Lot. The encroachments are for the construction of four storm drain outfalls which are necessary to provide safe conveyance of stormwater discharges at non-erosive velocities. The Environmental Guidelines (page 18) allow for “minimized buffer intrusions for construction of non-erosive storm drain outfalls”. In addition, the Application includes areas of temporary encroachment into unforested portions of the environmental buffer

during construction to allow for the removal of existing structures and impervious surfaces and to accommodate minor grading and tie-outs. These currently unforested areas will be stabilized and replanted per the details on the Forest Conservation Plan. The Final Water Quality Plan submitted with the future Site Plan application may also include a limit of disturbance within the environmental buffer to provide access to and accomplish the stream restoration work recommended in the Limited Amendment to the Master Plan. The limits of disturbance for the stream restoration work will be finalized on the Final Forest Conservation Plan submitted with the Site Plan. The only permanent encroachments in the environmental buffer are for the storm drain outfalls. All other areas will be replanted and protected through Category I conservation easements. The Application proposes to replant the entire environmental buffer with forest or native meadow habitat and restore sections of stream channel that have been adversely affected by the past land use as illustrated on the Stream and Wetland Restoration Plan. The environmental benefits will mitigate the effects of the stream valley buffer encroachments. The environmental buffers on the Eastern Lot will be protected via conservation easements and the buffers on the Western Parcel will be protected via park land dedication.

Forest Conservation

The Applicant submitted an FCP for review with the Preliminary Plan Application. The Application meets all applicable requirements of Chapter 22A of the Montgomery Forest Conservation Law as discussed previously in the Forest Conservation findings section of this report.

Impervious Surfaces

Impervious surface restrictions for development projects in this portion of the Ten Mile Creek SPA are set forth in the Clarksburg East and Clarksburg West Environmental Overlay Zones. The Application is subject to Chapter 59, Sections 4.9.5 and 4.9.6, the Clarksburg East and Clarksburg West Environmental Overlay Zones, respectively. The requirements of the Overlay Zones include limits on impervious surfaces for the total area under application for development. As noted earlier in this report, the proposal includes one application for development that includes properties under common ownership, encompassing land on both the east and west sides of I-270. The Eastern Lot is located within the Clarksburg East Environmental Overlay Zone, which imposes a fifteen percent impervious surface limit and the Western Parcel is located within the Clarksburg West Environmental Overlay Zone, which imposes a six percent impervious surface limit. The Western Parcel will be conveyed to M-NCPPC as an addition to the Ten Mile Creek Conservation Park and as conditioned will include the construction of an entrance driveway and gravel parking lot which will result in approximately 7,500 square feet of impervious surface on this Parcel. The Eastern Lot will be developed for the residential use, adding 718,178 square feet of impervious surface for the construction of roads and houses, inclusive of additional sidewalk improvements

requested by the Planning Board. Also as conditioned, the Applicant must update the calculations to remove the deduction of the existing accel/decel lanes which is reflected in the Planning Board's calculations and included as part of the 11.8 percent overall imperviousness by the Application. The impervious surface calculations provided by the Applicant on the Impervious Surface Exhibit subtract the area of existing accel/decel lanes that will be removed from their impervious surface calculations. The impervious surface calculations must show the total net amount of impervious surfaces for the Application and deducting impervious surfaces to be removed does not accurately reflect the total amount of impervious surfaces resulting from the Application. The 725,678 square feet of impervious surface, resulting in 11.8 percent for the overall Application Area is less than that permitted by the Overlay Zones for the area under application.

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; and*

Historic Preservation staff reviewed the Application and determined that there are no known burial sites on the Properties.

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

There are no other applicable provisions specific to the Property and necessary for approval of the subdivision is satisfied.

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 Administrative Subdivision 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 FEB 23 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 Vice Chair Fani-González, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor, at its regular meeting held on Thursday, February 18, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board



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