



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

MCPB No. 21-112  
Site Plan No. 820210110  
Ashford Woods  
Date of Hearing: September 30, 2021

**NOV 15 2021**

**RESOLUTION**

WHEREAS, under Section 59-7.3.4 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on March 18, 2021, Natelli Communities ("Applicant") filed an application for approval of a site plan for 322 new single-family-attached dwelling units and 42 two-over-twos for a total of 364 units, including 25% MPDUs, and one +/- 39.9 acre parcel for conveyance to M-NCPPC on +/-141.4 acres of Rural (R) and R-90 zoned-land, located at the southwest quadrant of the intersection with Frederick Road and Comus Road ("Subject 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, the site plan application, including a parking waiver request, for the Subject Property was designated Site Plan No. 820210110, Ashford Woods ("Site Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated September 20, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 30, 2021, the Planning Board held a public hearing at which it heard testimony and received evidence on the Application; and

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Approved as to  
Legal Sufficiency: /s/ Emily Vaias  
M-NCPPC Legal Department

WHEREAS, on September 30, 2021 the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 4-0; Chair Anderson, Commissioners Cichy, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820210110, including the Parking Waiver, for a total of 364 units, including 25% MPDUs, and one +/- 39.9 acre parcel for conveyance to M NCPPC, on the Subject Property, subject to the following conditions:<sup>1</sup>

#### Density, Height & Housing

1. Density

The Site Plan is limited to 364 residential dwelling units consisting of 322 single-family attached dwelling units and 42 two-over-two multi-family dwelling units.

2. Height

The development is limited to a maximum height of 50 feet for the single-family attached dwelling units and 65 feet for the two-over-two multi-family dwelling units, as measured from the building height measuring points, as illustrated on the Certified Site Plan.

3. Moderately Priced Dwelling Units (MPDUs)

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (MCDHCA) in its letter dated August 11, 2021 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a) The development must provide a minimum of 25 percent (25%) MPDUs or MCDHCA-approved equivalent consistent with the requirements of Chapter 25A and the applicable Master Plan.
- b) Before issuance of any building permit for any residential unit(s), the MPDU Agreement to Build between the Applicant and the MCDHCA must be executed.

#### Open Space, Facilities and Amenities

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

4. Open Space

The Applicant must provide no less than 80 percent (or approximately 105.4 acres) of Rural Open Space and 6.08 acres of open space for recreation and amenities as shown in the Open Space Plan in the Certified Site Plan.

5. Facilities and Amenities

The Applicant must complete the open space amenity areas, to include final grade, stormwater, lawn establishment, and installing lawn furniture and hardscape for each open space and/or amenity area prior to final inspection of the last unit within the block where the open space amenity area is located, except for the following major amenity development triggers:

- a) Prior to final inspection of the last unit on Block D, the Applicant must complete: The open space area including the sitting areas, playground, and open grass lawn area identified on the Certified Site Plan north of Private Street C on Block D.
- b) Prior to issuance of the 200<sup>th</sup> building permit, all hardscape amenities located in the central open space area to the northeast of the intersection of Private Street A and Private Street D on Block F must be completed. These amenities include the community building, covered patio with stamped concrete, playground, benches, and sidewalks.
- c) Prior to issuance of the 275<sup>th</sup> building permit, all open spaces and amenity areas located in the central open space area to the northeast of the intersection of Private Street A and Private Street D on Block F must be completed. These include open grass area lawn and other landscaping.
- d) Prior to final inspection of the 364<sup>th</sup> unit, all remaining amenity and open spaces on the Subject Property must be completed.

Parks

6. Prior to issuance of the 50<sup>th</sup> above grade building permit, the Applicant must construct a gravel trailhead parking lot able to accommodate twelve (12) vehicles, a standard Park kiosk, park sign and lockable gate/cable just south of Comus Road on the property to be conveyed to Parks (Parkland). The western parcel must also include a driveway entrance with at least 20-foot width with the apron approaching 30 feet in width. Implementation of improvements on future Parkland will require a Park Construction Permit.
7. All trails associated with the development to allow public access with the intent of future area connectivity. The Applicant must enter into a reciprocal access easement with M-NCPPC to allow access for the residents and visitors to the natural surface trails within HOA control. The easement shall be for the sole

purpose of reciprocal access and must be compatible with the overall site layout of the Applicant's property. The public access easement may be reasonably relocated by the Applicant with Department of Planning's review and approval.

8. Applicant to provide up to 7,500 square feet of impervious area on the west side of I-270 to provide the required future parking area and trailhead improvements at Comus Road for the Ten Mile Creek Trail system.
9. Prior to issuance of the 200<sup>th</sup> building permit, the Applicant must construct a natural surface trail connection and necessary stream(s) and wetland crossing(s) from the Subject Property to the adjacent property identified as Parcel No. 033. The Applicant shall coordinate with the neighboring property owner, as necessary. The alignment of the natural surface trail connection shown on the Site Plan must be relocated approximately 50-feet downstream from where the three properties (Subject Property, Parcel No. 800, and Parcel No. 033) meet, as reviewed and approved by M-NCPPC Park & Planning Staff and Maryland Department of the Environment.
10. Prior to the issuance of the 350<sup>th</sup> building permit, the Applicant must complete construction of all natural surface trail connections as shown in the site and landscape plan of the Certified Site Plan, or an equivalent approved by Staff.
11. Prior to the issuance of the 350<sup>th</sup> building permit, the Applicant must install appropriate signage for pedestrians and vehicles as shown in the Certified Site Plan.
12. Prior to the issuance of the 350<sup>th</sup> building permit, the Applicant must install appropriate wayfinding signage for the overall trail system as shown in the Certified Site Plan.

#### Site Plan

13. Site Design

- a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown in the Certified Site Plan on Sheets A.01, A.02, A.03 and A.04 of the submitted architectural drawings, as determined by M-NCPPC Staff.
- b) The exterior architectural character, proportion, materials, and articulation of the MPDUs must be substantially similar to the exterior architectural



character, proportion, materials, and articulation of the market-rate units, as determined by M-NCPPC Staff.

- c) For end units that are high visibility, as identified in the Certified Site Plan, all applicable building permit applications must clearly show the minimum architectural design requirements that follow. At a minimum, the side facades must include:
  - i. 1 story, 2 stories, 3 stories, or full height brick consistent with the front elevation selected and one of the following options:
    - a. 6 windows with similar fenestration and trim to the front elevation selected; OR
    - b. 5 windows with similar fenestration to the front elevation selected AND an architectural highlight, such as, fireplace, bay window, a box window, a faux or real roof vent, or closed shutter detail (up to two).

14. Maintenance of Public Amenities

The Applicant and ultimately the future HOA is responsible for maintaining all publicly accessible amenities including, but not limited to mailboxes, trash receptacles, benches, natural and hard surface trails, recreation facilities, private light fixtures, landscaping, retaining walls, and hardscape.

15. Recreation Facilities

The Applicant must provide the minimum required recreation facilities as shown on the Recreation Exhibit of the Certified Site Plan.

16. Landscaping

- a) The Applicant must install all landscaping as shown on the landscape plan sheets of the Certified Site Plan within the later of six months, or by the next planting season of receiving the Use and Occupancy Certificate/Final Inspection for the adjacent residential dwelling unit. Landscape and hardscape not associated with a specifically identified open space or amenity must be installed by the end of the next planting season after development activities conclude on the adjacent land. Stormwater management facility plantings must be completed as part of the stormwater management permit.
- b) The Applicant must install the plantings shown on the landscape plans of the Certified Site Plan. Any variation in plant species or quantity not already accounted for in the plant substitution list needs M-NCPPC Staff approval.

17. Lighting

- a) Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America

(IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).

- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

## Environment

### 18. Forest Conservation & Tree Save

The development must comply with the Final Forest Conservation Plan No. 820210110, approved as part of this Site Plan, subject to the following conditions:

- a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
- b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
- c) The Applicant is not required to plant, bond, submit a Maintenance and Management Agreement or record a conservation easement over the area identified as a potential forest bank on the FCP until such time as the potential forest bank is approved. These items are not required prior to the pre-construction meeting.
- d) Prior to recordation of the first plat and the start of any clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers that will not be conveyed to M-NCPPC Department of Parks, or overlap 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 Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.

- e) Prior to the start of any clearing, grading, or construction for this development Application, the Applicant must submit financial surety in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for all of the forest planting, mitigation trees, and maintenance, including invasive species management controls.
- f) Prior to recordation of the first plat and the start of any clearing, grading, or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and mitigation trees. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
- g) Prior to the start of any clearing, grading, or construction for this development Application, the Applicant must enter into a Conservation Maintenance and Management Agreement ("CMMA") for the stream buffer areas planted in meadow, in a form approved by the M-NCPPC Office of General Counsel. The CMMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
- h) Prior to the start of any clearing, grading or construction for this development Application, the Applicant must submit a financial surety for the meadow planting areas, in a form approved by the M-NCPPC Office of the General Counsel, as determined by an approved cost estimate. The cost estimate should include all site preparation, planting, and maintenance requirements as specified in the approved CMMA.
- i) Prior to the first building permit, the Applicant must record a declaration of covenants that identifies by metes and bounds and requires future maintenance of the meadow planting areas and includes reporting and certification that sufficient reserves are provided in any of the Applicant's or HOA's budget, as appropriate, and that a portion of HOA dues are to be put into escrow to cover future maintenance costs.
- j) Implementation of the meadow plantings within the stream buffer must begin during the first growing season following the release of the first sediment control permit. Flexibility in the timing of plantings may be

permitted by the M-NCPPC Forest Conservation Inspection Staff to address the construction of outfalls within the meadow areas. The Applicant and the future HOA must schedule annual inspections and provide maintenance reports to M-NCPPC consistent with the approved CMMA.

- k) Prior to the initial meadow planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent signage that identifies these areas, along the perimeter of the stream buffer meadow plantings, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- l) Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- m) The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff. Flexibility in the timing of the plantings may be permitted by the M-NCPPC Forest Conservation Inspection Staff to allow for the required stream restoration work to occur.
- n) The Applicant must install the meadow plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff. Flexibility in the timing of the plantings may be permitted by the M-NCPPC Forest Conservation Inspection Staff to allow for the required stream restoration work to occur.
- o) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- p) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

19. Noise Attenuation

- a) Prior to issuance of a building permit for any of the noise impacted lots per the Noise Analysis dated November 21, 2019, or as amended, the Applicant must provide certification to M-NCPPC Staff from an engineer who specializes in acoustical treatment that:
  - i. The building shell for residential dwelling units on those lots will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b) Before issuance of any Use and Occupancy Certificate or Final Inspection as applicable, for any of the noise impacted units, a Professional Engineer must certify to the Planning Department and Department of Permitting Services that the noise impacted units have been constructed in accordance with the certification of the engineer that specializes in acoustical treatments.
- c) If any changes occur to the Site Plan which affect the validity of the noise analysis dated November 21, 2019, acoustical certifications, and/or noise attenuation features, a new noise analysis will be required to reflect the changes and new noise attenuation features may be required.
- d) All noise impacted lots/units must be clearly identified on the Certified Site Plan.

20. Stream and Wetland Restoration Plan

- a) Prior to the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must remove the collapsed foot bridge and all trash and debris from within the streams and environmental buffers.
- b) Prior to the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the existing pond must be converted to a wetland in accordance with the Final Stream and Wetland Restoration Plan. This conversion must occur prior to planting in the stream valley buffer.

21. Water Quality

- a) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its Final Water Quality Plan letter dated June 2, 2021 and hereby incorporates them as conditions of the Site 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 amendment does not conflict with other conditions of the Site Plan approval.

- b) Impervious Surfaces are limited to no more than 11.8 percent (11.8%) or 723,490 square feet of the area under application for development within the Clarksburg East and Clarksburg West Environmental Overlay Zones, as shown on the Impervious Surface Plan dated July 2021.
- c) Prior to the start of any clearing, grading or construction on the Subject Property, the Applicant must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 11.8 percent of the area under application for development within the Clarksburg East and Clarksburg West Environmental Overlay Zones, as shown on the Impervious Surface Plan dated July 2021. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
- d) Prior to the start of any clearing, grading or construction, the Applicant must remove impervious surfaces and restore those areas which will not remain impervious in the built condition to a fully pervious condition as shown on the Impervious Surface Plan dated July 2021. The removal and restoration of impervious surfaces must be in compliance with the M-NCPPC Department of Parks' *"Guidelines for converting Paved Areas into Pervious Greenspace"*. M-NCPPC Forest Conservation Inspection Staff must be present at a pre-work meeting prior to the removal of the impervious surfaces.

## Transportation & Circulation

### 22. Pedestrian & Bicycle Circulation

- a) The Applicant must provide fourteen (14) long-term and twelve (12) short-term bicycle parking spaces.
- b) The long-term spaces must be in a secured, well-lit secure parking areas, and the short-term spaces must be inverted-U racks (or approved equal) in a location convenient to the main entrance to the amenity areas (weather protected preferred). The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan. The long-term spaces may be provided within the garages of the 2-over-2 units.

### 23. Fire and Rescue

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated October 14, 2020 and amended on August 24, 2021, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letters, which MCDPS may amend if the amendments do not conflict with other conditions of Site Plan approval.

24. DPS-ROW

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated June 11, 2021 and incorporates them as conditions of approval with the exception of recommendation no. 1 under the heading that reads, "And the following needs to be a condition of the Certified Site Plan". The Applicant must comply with each of the other recommendations as set forth in their memo, with the exception of recommendation no. 1 under the heading that reads "And the following needs to be a condition of the certified site plan", which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

25. Site Plan Surety and Maintenance Agreement

Prior to issuance of the first above grade building permit, excluding retaining walls, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, private storm drainage facilities, private street trees and street lights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

26. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to the approval of the Certified Site Plan.

27. Previous Approval



Prior to the issuance of the first (1<sup>st</sup>) Certificate of Occupancy or Final Inspection, as applicable, the existing Special Exception (S-2367) must stop operating. Documentation of its ultimate abandonment must be provided to M-NCPPC Planning Staff by the Applicant.

**28. Certified Site Plan**

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, development program, and Site Plan resolution, and other applicable resolutions on the approval or cover sheet(s).
- b) Revise Sheet A.02 (Townhome Elevation) so the elevations are consistent with Condition No. 14 above.
- c) Add a note stating that "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Provide the standard landscape plan note that planting in stormwater management areas are subject to the final approval by MCDPS Water Resources Staff.
- g) Revise the FCP to include a planting plan for the potential forest bank area with a notation that this area will only need to be planted if a forest bank is approved in the future.
- h) The Applicant must revise the Final Stream and Wetland Restoration Plan to address comments in ePlans.
- i) Include a phasing plan as shown in the Staff Report.
- j) On Sheet A.03 of the two-over-two multi-family elevations add 'High Visibility Side' below graphic.
- k) Include the following note in the Site Plan and Landscape Plan, "M-NCPPC Staff in coordination with the Applicant may request minor field adjustments to the trail alignment".
- l) Revise applicable sheets to demonstrate that the recreation pond will be converted to a wetland.
- m) Revise applicable drawings to include a natural surface trail connection to the adjacent property identified as Parcel No. 033 located southeast on the Subject Property.

- n) Revise applicable drawings to include 1) wayfinding signage for the overall trail system and 2) vehicular and pedestrian signage where trails intersect with the access road.
- o) Revise the Recreation Exhibit with additional pedestrian bridge(s) to demonstrate supply points are being met.
- p) Update the Site Plan to identify noise impacted units.
- q) Modify the Recreation Facility Supply Point Chart and the Recreation Amenity Plan on Sheet LL.16 of the Site Plan to include pedestrian bridge(s) for the necessary stream(s) and wetland crossing(s).

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Ashford Woods, Site Plan No. 820210110, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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. When reviewing an application, the approval findings apply only to the site covered by this Application.*

The approval of the Site Plan findings will only apply to the Subject Property being reviewed as part of this Application.

*2. To approve a site plan, the Planning Board must find that the proposed development:*

- a) satisfies any previous approval that applies to the site.*

The Site Plan conforms to all conditions of the Preliminary Plan No. 120200110 which was approved by MCPB Resolution No. 20-140, dated February 23, 2021.

- b) satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

- c) *satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;*

This section is not applicable as the Property's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.

- d) *satisfies applicable use standards, development standards, and general requirements under this Chapter;*

The Application complies with the basic requirements of Chapter 59. The residential development was reviewed for compliance with the dimensional requirements for the R-90, R, and Clarksburg East and West Environmental Overlay Zones as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in the R-90 and Overlay zones. Pursuant to Section 4.4.8.C, the Application would be limited to 50 percent townhouses or duplexes and up to 100% townhouses or duplexes with Planning Board approval. However, per Section 4.9.5.D.5.c, for the Clarksburg East Environmental Overlay Zone, any unit type is permitted and supersedes the unit type specifications under Sect. 4.4.8.C for properties in the R-90 Zone. Thus, there is no limitation on how much of each unit type is allowed for this Application.

A detailed summary of this review is included in Table 1 below.

*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. 4.4.8.C <sup>2</sup>	Approved by the Planning Board
<b>Tract Area (Total)</b>	n/a	n/a	<b>141.4 acres</b>
Eastern Lot			99.1 acres
Previous right-of-way dedication			2.3 acres
Western Parcel			39.9 acres
<b>Net Tract Area (Total)</b>	n/a	n/a	<b>131.8 acres</b>
Eastern Lot			99.1 acres
Western Parcel (to be conveyed)			39.9 acres
Total ROW dedications			-2.8 acres
Transit Easement			-4.4 acres

<sup>2</sup> Pursuant to Sect 4.9.5.D.5.c., when 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. 4.4.8.C <sup>2</sup>	Approved by the Planning Board
<b>Max Density<sup>3</sup></b>	Eastern Lot	3.66 du/ac		3.59 du/ac
	Western Parcel	n/a	3.66 du/ac <sup>4</sup> 1 du/5 acres <sup>5</sup>	(up to 364 units) 0
<b>Lots Total</b>	Townhouse	n/a	n/a	326
	Multi-family	n/a	n/a	322
<b>Parcels</b>				4
				37
Rural Open Space (min) Open Space for Recreation & Amenities		80 percent n/a	n/a 15% <sup>6</sup>	80.1% 4.6%
Min. MPDUs		The maximum density with MPDU bonus density is 3.66 du/ac <sup>7</sup>	12.5% + 1 <sup>8</sup>	25%
Unit Type		Any type of dwelling unit is permitted, up to the maximum number allowed	Townhouse; Up to 50% townhouses or duplex permitted and up to 100% of townhouses or duplex permitted with Planning Board approval <sup>9</sup>	Townhouses: 88% Multi-family: 11.5%
<b>Lot Standards</b>				
Lot Area (min)				
Market Rate Units MPDUs		Determined at Site Plan	Lot area and dimensions not applicable under Sect. 4.9.5.D.5.e for properties in the Clarksburg East Environmental Overlay Zone and zoned R-90	1,197 square feet
Lot width at front building line Townhouse/Multi-family		Determined at Site Plan		981 square feet
Lot width at front lot line Townhouse/Multi-family		Determined at Site Plan		16 feet
Frontage on Street		Determined at Site		16 feet
			Required	

<sup>3</sup> Under Sect. 4.9.5.D.5 in the Clarksburg East Environmental Overlay zone, "the maximum density with MPDU bonus density is 3.66 units per acre".

<sup>4</sup> 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.

<sup>5</sup> 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 Staff Report.

<sup>6</sup> The Clarksburg East Environmental Overlay Zone under Sect. 4.9.5.D.4 supersedes the common open space specifications under Sect. 4.4.8.C for properties in the R-90 Zone.

<sup>7</sup> Under Sect. 4.9.5 the maximum density without MPDU bonus density is 3 du/ac.

<sup>8</sup> 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 Section 4.4.8.C.

<sup>9</sup> The Clarksburg East Environmental Overlay Zone under Sect. 4.9.5.D.5.c supersedes the unit type specifications under Sect. 4.4.8.C for properties in the R-90 Zone.

<sup>10</sup> 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 under Sect. 4.9.5.D.5.d.ii

Development Standards	CEE Overlay Zone Requirements	Required by the R-90 Zone under Sect. 4.4.8.C <sup>2</sup>	Approved by the Planning Board
Multi-family Accessory Structures	65 feet n/a	n/a 25 feet	n/a
Form Massing (max)  Townhouse Multi-family	  n/a n/a	  8 n/a	  8 n/a
Parking  Min. Vehicle Parking (min) Residential Community Center  Min. Bicycle Parking (min)  Short Term Long Term	  n/a n/a  n/a n/a	  637 6  1 14	  964 14 (on-street) <sup>12</sup>  12 14
Impervious Surface Level  Application Area	 12.4 percent (or 764,191 SF) <sup>13</sup>	 n/a	 11.8 percent (or 725,678 SF)

In addition, the Application complies with the specific development standards of the Clarksburg East Overlay Zone set forth in 59.4.9.5.D as follows:

1. *Except as allowed under Section 4.9.5.B, the maximum total impervious surface area for any development after August 4, 2014 is 15% of the total area under application for development.*

The requirements of the Overlay Zones include limits on impervious surfaces for the total area under application for development and – consistent with this requirement – the impervious surfaces for the residential development is limited to no more than 11.8 percent (or 725,678 square feet) of the total area under application for development within the combined Clarksburg East and West Environmental Overlay Zones.

2. *All environmental buffer areas or natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area must be regulated as environmentally sensitive areas, just as other areas identified environmentally*

<sup>12</sup> This number is based on the number of on-street parking spaces through the parking waiver included with the Application (the Applicant is requesting a revised parking waiver as a result in the increase in size of the community center).

<sup>13</sup> This percentage is based on total impervious limit for Eastern Lot and Western Parcel.

*sensitive in law, regulations, or in the Planning Board's Guidelines for the Environmental Management of Development, as amended.*

Environmental buffer areas and natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area have been properly regulated and protected with forest conservation easements, maintenance and management agreements or dedicated to Parks for public use.

3. *All environmentally sensitive areas must be included in the required open space area.*

All areas outside of the development area are protected and included in the required open space area, including the environmentally sensitive areas.

4. *The minimum area devoted to open space must be 80% of the total area under application for development. For the purpose of this Overlay zone, open space is defined as rural open space as described and managed under Section 6.3.4.A.2, Section 6.3.4.A.4.b, and Section 6.3.4.B.*

The Application provides the minimum 80 percent of rural open space required. See Table 1.

5. *If the underlying zone is R-90:*
  - a. *the maximum density without MPDU bonus density is 3 dwelling units per acre;*
  - b. *the maximum density with MPDU bonus density is 3.66 dwelling units per acre;*
  - c. *any type of dwelling unit is permitted, up to the maximum number allowed;*
  - d. *the maximum building height is:*
    - i. *35 feet for a detached house;*
    - ii. *50 feet for a duplex or townhouse; and*
    - iii. *65 feet for an apartment building or any non-residential building; and*
  - e. *when site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks of the R-90 zone do not apply. Such requirements are determined during the site plan approval process under Section 7.3.4.*

The Application meets the standards above as shown in Table 1.



In addition, the Application complies with the specific development standards of the Clarksburg West Overlay Zone set forth in 59.4.9.6.D as follows:

1. *Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under Section 4.9.6.B, the maximum total impervious surface area for any development after August 4, 2014 is 6% of the total area under application for development.*

There is no development on the portion of the property in the Clarksburg West Overlay Zone, except for limited park improvements consisting of a gravel trailhead parking lot for twelve (12) vehicles, a standard Park kiosk, park sign and lockable gate. As described below under Impervious Surfaces, the Application conforms to the impervious surface requirements.

2. *County owned land or land under a conservation easement granted to the benefit of the County that is not managed as parkland by the Maryland-National Capital Park and Planning Commission may not add any impervious surface.*

No impervious surface area will be added within the conservation easement areas or County owned land.

3. *Lot size requirements in the underlying zone do not apply.*

Lot sizes were determined as part of the Site Plan application. See Table 1 above.

4. *When site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks of the underlying zone do not apply. Such requirements are determined during the site plan approval process under Section 7.3.4.*

The minimum lot area, lot dimensions, building coverage, and building setbacks are determined as part of this Site Plan. See Table 1 above.

5. *All environmental buffer areas or natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area must be regulated as environmentally sensitive areas, just as other areas identified environmentally sensitive in law, regulations, or in the Planning Board's Guidelines for the Environmental Management of Development, as amended.*

Environmental buffer areas and natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area have been properly regulated and will be protected either through park dedication, maintenance and management agreements, or Category I conservation easements.

6. *All environmentally sensitive areas must be included in the required open space area.*

All areas outside of the development area are protected and included in the required rural open space area.

7. *The minimum area devoted to open space must be 80% of the total area under application for development. For the purpose of this Overlay zone, open space is defined as rural open space as described and managed under Section 6.3.4.A.2, Section 6.3.4.A.4.b , and Section 6.3.4.B.*

The Application provides the minimum 80 percent of rural open space required. See Table 1.

#### Article 59-6 – General Development Standards

##### *i. Division 6.1 Site Access*

The Subject Property provides safe and convenient vehicular, bicycle, and pedestrian circulation within the Subject Property to the individual residential units, open spaces, and amenities, and to adjoining properties. Access for all new development will come from two new entrances along Frederick Road; the primary entrance to the south will provide access at the existing Snowden Farm Parkway and as conditioned in the Preliminary Plan, a traffic signal will be constructed by the Applicant prior to the release of the 270th building permit. A secondary access point to the north will be implemented at the existing Florence Street intersection; this existing road opposite the Subject Property serves a small parking lot and maintenance facility for Little Bennet Regional Park, neither generating significant traffic. As noted in the Traffic Study, this secondary access point will remain unsignalized due to the low expected traffic use and will remain safe. A third access point will be provided along Comus Road to accommodate public entry and parking for the western parcel which will be dedicated to M-NCPPC Parks.

Pedestrian and bicycle access to the Property is adequately and safely accommodated for the new residential development. All streets will have a minimum 5-ft wide sidewalk on both sides of the street except as noted, as well as additional interior connections provided across and along mews. The sidewalks also connect to the natural surface trail connections throughout the development. An additional natural surface trail connection to the neighboring Miles Coppola property to the south is also conditioned to be provided by this Application.

Access to Frederick Road and the internal private street network right-of-way widths are all in conformance with those approved by the Preliminary Plan as part of the Adequate Public Facilities Review.

*ii. Division 6.2. Parking, Queuing, and Loading*

The Site Plan provides adequate, safe, and efficient vehicle and bicycle parking to serve the development. Vehicle parking in the R-90 Zone has a minimum of two spaces per single-family dwelling unit, except for MPDUs which is one space per unit. On-street and off-street parking is provided for the residential development. The residential development includes a total of 964 parking spaces where 637 parking spaces are required. These spaces are located on private driveways and garages. Ninety-one (91) additional on-street parking spaces are provided along private roads, although typically on only one side to accommodate visitor parking. Fourteen (14) on-street parking spaces are provided near the central clubhouse as mentioned in the waiver request. Therefore, adequate vehicle parking is provided.

Twelve (12) short-term bicycle parking spaces are also available to the public and, conveniently located in the community recreation areas (community center and playground). Space for fourteen (14) long-term bike parking places will be in garages for the multi-family units.

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

The Applicant is requesting a revised waiver pursuant to Section 59.6.2.10, of the off-street vehicle parking requirement for the community center. Originally the Applicant requested a parking waiver for five (5) spaces, which was approved by the Planning Board as part of the Preliminary Plan on February 23, 2021. However, the Applicant is now requesting to increase the community center slightly from 2,200 square feet to 2,516 square feet. Pursuant to Section 59.6.2.4.B the number of parking spaces required for the

2,516-square foot community center is six (6). The Applicant is requesting the Planning Board waive the required off-street parking for the additional parking spaces in order to reduce the addition of impervious surface. In lieu of providing these six (6) off-street spaces, the Applicant is providing adequate adjacent on-street parking along Street D, which includes fourteen (14) spaces. This is an adequate replacement for the use and will accommodate all parking needs in a safe and efficient manner. Additionally, it is expected and desired that residents will walk to and from the community center as all units fall within a 10-minute walk, with the vast majority within a 5-minute walk. Therefore, this Parking Waiver is granted as part of this Application.

*iii. Division 6.3. Open Space and Recreation*

*Open Space*

The Site Plan adequately meets the Open Space requirements as detailed in the Open Space Applicability section of the Zoning Ordinance. A total of approximately 80.1 percent of the Property will be devoted to rural open space which meets the minimum 80 percent of rural open space required. Rural open space will either be conveyed to M-NCPPC for parkland or managed by the future Homeowners Association. The Applicant is providing an additional 4.6 percent of open space for recreation and amenities.

*Recreation*

The Site Plan is in compliance with the 2017 *Recreation Guidelines* through a variety of recreation facilities onsite and offsite. Future residents and their visitors of all age groups will be adequately served by a variety of active and passive recreation facilities as shown in Table 2 as part of the Staff Report, which are safe and accessible.

The primary recreation area that will serve the residential development is centrally located and will feature amenities such as a 2,516 square foot community building, covered patio with stamped concrete, playground, open grass lawn areas, benches, bike racks, sidewalks, and all other green area. Additional detailed images of the community building with a patio, playgrounds, and bike racks are provided below. The recreation area will be landscaped and will consist of several seating areas with tables, bicycle parking, and trash receptacles.

An additional open space area will be included. The open space area includes two open grass lawn areas, a playground, and seating areas. Recreation

amenities will also include a wetland west of the development area, meadows and a continuous natural surface trail incorporated throughout the Subject Property.

Across Frederick Road just north of the Subject Property is the Little Bennet Regional Park. The Application includes offsite amenities to meet the recreation requirements. The offsite amenities include a trail system, woodland, and a grill or firepit which accounts for less than thirty-five percent (35%) of the total supply points as shown in Table 3 of the Staff Report. The offsite amenities are also in close proximity to the Subject Property and within walking distance.

Therefore, as described above, the Site Plan adequately meets the open space and recreation requirements.

iv. *Division 6.4. General Landscaping and Outdoor Lighting*

*Landscaping*

The Site Plan meets the standards for the provision of landscaping and outdoor lighting as required by Division 6.4. The landscaping provided is appropriate for this residential development by achieving several objectives. It provides canopy coverage and shade on all the roads and open spaces. A variety of large deciduous and ornamental trees including Autumn Blaze Freeman Maple, Brandywine Red Maple, Legacy Sugar Maple, Black Gum, Princeton Sentry Ginko, Happidaze Sweet Gum, Emerald City Tulip, Ironwood, Red Oak, Merlot Eastern Redbud, Rising Sun Redbud, Fringe Tree, Flowering Dogwood, and Twilight Crapemyrtle line up along all the main private streets. Streets and open spaces have been designed to maximize the number of canopy trees provided.

Smaller plant material, including understory trees and shrubs are used to delineate spaces, such as play areas and sitting areas, and to highlight specific features, such as entrance signs. Additionally, the landscaping provided efficiently adds screening and buffering at key locations within the community, specifically in areas between the development and rural open space.

Additionally, all stormwater management facilities, which are dispersed throughout the development, will be heavily planted with a variety of plant material to achieve Environmental Site Design (ESD) goals. These facilities and associated landscaping are reviewed and approved by DPS-SWM. Ultimately, the landscaping provided will strengthen community character and improve water and air quality.

*Lighting*

The on-site lighting is typical street lighting found along most internal residential developments. The photometric plan shows how the lighting meets the illumination requirements to avoid light in excess of 0.5 footcandles from spilling over the Subject Property line. The lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. Street lighting consists of pole mounted light fixtures located on private roads, alleys, and major open spaces. The Applicant will also coordinate with MCDOT, Division of Traffic Engineering and Operations to locate streetlights in the public rights-of-way.

As shown in the Development Standards table, the Site Plan meets all of the general requirements and development standards of Sections 59.4.4.8, 4.3.3, 4.9.5 and 4.9.6 of the Zoning Ordinance and as outlined above, the general development requirements of Article 59-6 of the Zoning Ordinance.

e) *satisfies the applicable requirement of:*

i. *Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

The Application meets the Final 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 which includes land disturbance, and as such 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 (SPA) Law, a Preliminary SPA Water Quality Plan was reviewed and approved as part of the Preliminary Plan. The Final SPA Water Quality Plan was reviewed in conjunction with this 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 Final Water Quality Plan under their purview. The Planning Board's responsibility is to



determine if environmental guidelines, SPA forest conservation and planting requirements, and limits on impervious surfaces have been satisfied.

*MCDPS and MCDEP Water Quality Plan Review Elements*

On June 2, 2021, MCDPS conditionally approved the elements of the SPA Water Quality Plan under its purview with conditions to be addressed during the detailed sediment control/stormwater management plan stage.

*Monitoring*

The Applicant will pay a stream monitoring fee to MCDPS due at time of detailed sediment control plan submittal and an 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 Final Water Quality Plan under its purview. The Final Water Quality Plan is consistent with the Preliminary Water Quality Plan that was approved as part of the Preliminary Plan.

*Environmental Buffer Protection*

The NRI/FSD No. 420191590 for the Subject Property 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. These 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 also includes disturbance within the environmental buffer to implement the required Stream and Wetland Restoration Plan, including the removal of the existing pond and conversion to a wetland. 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 Site Plan Application. The Application meets all applicable requirements of Chapter 22A of the Montgomery Forest Conservation Law as discussed below in the Forest Conservation findings section.

#### *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. The amount of impervious surfaces as illustrated on the Impervious Surface Plan, is consistent with the approved Preliminary Plan under Resolution No. 20-140. The Preliminary Plan application included a total of 725,678 square feet of impervious surface, resulting in an 11.8 percent impervious area for the overall Application area. The Impervious Surface Plan submitted with the Site Plan Application proposes 723,490 square feet of impervious surface, resulting in a slight reduction in impervious surfaces, but still equates to 11.8 percent for the overall Application area.

The Application meets all applicable requirements of Chapter 19 for SPA Water Quality Plans.

The development area on the Subject Property drains in two directions (southwest and southeast) with roughly half of the site area draining in each direction. The Water Quality Plan proposes to maintain the natural flow patterns by adjusting the developed drainage divides to mimic the existing drainage divides as much as possible. As a condition of the Water Quality Plan approval DPS required enhanced soil preparation and topsoiling above and beyond the MDE requirements for all disturbed areas of more than 1,000 square feet. This will consist of soil loosening and fertilizing the top 6-8 inches of soil and providing a minimum 8-inch layer of topsoil. This will serve to promote infiltration and groundwater recharge. Additionally, 50

Environmental Site Design (ESD) facilities will treat stormwater runoff. The ESD facilities will provide treatment volumes that exceed the required treatment volumes by roughly twenty-five percent.

At the detailed plan review stage DPS will review the stormwater management plans to assure that the ESD facilities are non-erosive and safely conveyed to a stable outfall. The ESD facilities are not designed to overflow in an uncontrolled manor. Flows that exceed the design storm will be conveyed to the storm drain system. The storm drain outfalls will be required to meet DPS standards for velocity and downstream conditions. Additionally, at this stage DPS will review the plans for the minimization of disturbed areas.

*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 Final Stream and Wetland Restoration Plan.

ii. *Chapter 22A, Forest Conservation*

The Subject Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Final Forest Conservation Plan (FCP) is consistent with the approved Preliminary Forest Conservation Plan that was approved as part of the Preliminary Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts to the critical root zones of seven (7) subject trees. The Preliminary FCP included approval of a variance request but did not include seven trees that will be impacted by the construction of a WSSC force main connection within the MD 355 right-of-way. The Site 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 Master Plan 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 Master Plan 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  $\geq 15$  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 Master Plan.

#### *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 located on the Western Parcel, other than the existing utility right-of-way that will remain. As discussed, and approved as part of the Preliminary Plan, there will be some encroachment within the environmental buffer for minor grading within unforested portions of the buffer, and for the construction of four storm drain outfalls to allow for stormwater to be discharged at a non-erosive velocity. These impacts have been minimized by locating the outfalls within existing stormwater management easements, in unforested portions of the environmental buffer, and within portions of the buffer that will also be disturbed for the demolition and removal of existing structures and impervious surfaces.

The FCP identifies an additional area of temporary encroachment in the environmental buffer that is necessary to complete the conversion of the existing pond to a wetland and perform stream restoration work. These areas are identified on the FCP and the Stream and Wetland Restoration Plan. This disturbance is temporary as the areas will be restored and planted, providing water quality benefits. The conversion of the pond to a wetland must occur before the stream buffers are planted. 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.

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

#### Forest Conservation

As required by the Forest Conservation Law, a Final Forest Conservation Plan (FCP) for the Property was submitted with the Final Plan. The FCP is substantially consistent with the approved Preliminary Forest Conservation 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.

#### *Eastern Lot*

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 4.02 acres and retain 20.84 acres of forest. The forest clearing has increased by 0.32 acres over the approved Preliminary FCP due to forest clearing required to remove the existing pond and convert it to a wetland. This generates a 0.64 acre forest planting requirement as illustrated in the forest conservation worksheet on Sheet 1 of the FCP. Approximately 3.10 acres of the 4.02 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 right-of-way 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. Consistent with the approved Preliminary FCP, 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 right-of-way 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 0.92 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, a 0.33-acre area in the western portion of the Lot, near I-270, and 0.31 acres around the existing pond. Aside from the forest clearing related to the pond removal, the other areas will be cleared for the construction of roads and houses in the development.

The Application 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, as 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 20.84 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 0.64 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 the 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 15.23 acres of new forest on the Property within the stream buffers, when added to the 51.38 acres of retained forest, it results in 66.61 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 36.07 acres will be protected through a Category I conservation easement on the Eastern Lot. An additional 3.31 acres of forest may be planted and protected in a Category I Conservation Easement should



the Applicant decide to create a forest bank in the future. This potential forest bank is identified on the FCP.

#### *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 an 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.

A tree variance was previously granted to remove ten trees and to impact, but not remove one other tree as part of the Preliminary Plan. The FCP includes an additional tree variance request to account for trees that will be impacted by the construction of the WSSC force main sewer connection within the MD 355 right-of-way. The tree variance request is detailed below.

#### *Variance Request*

The Applicant submitted a variance request dated June 8, 2021. The Applicant has requested a variance for the impact, but not removal of seven (7) trees that are 30 inches and greater, diameter breast height (DBH), that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. This variance request is in addition to the variance that was granted as part of the Preliminary Plan approval. Disturbance proposed by the Application to construct a WSSC force main connection within the MD 355 right-of-way will result in impacts to the critical root zones (CRZ) of trees T84, T85, T87, T88, T90, T91, and T92, as noted on the FCP and the table below.

*Table 2 – Impacted Protected Trees*

Tree ID	Common Name	Scientific Name	DBH	Reason
T84	Southern Catalpa	<i>Catalpa speciosa</i>	35.8 in.	WSSC force main connection
T85	White Mulberry	<i>Morus alba</i>	30.2 in.	WSSC force main connection
T87	Southern Catalp	<i>Catalpa speciosa</i>	35.2in.	WSSC force main connection
T88	Silver Maple	<i>Acer saccharinum</i>	35.2in.	WSSC force main connection
T90	Southern Catalpa	<i>Catalpa speciosa</i>	34.1in.	WSSC force main connection
T91	Boxelder	<i>Acer negundo</i>	32.2 in.	WSSC force main connection
T92	White Mulberry	<i>Morus alba</i>	30.2in.	WSSC force main connection

#### *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. The project is required to construct a new WSSC pump station to service both the development site and the surrounding vicinity. The implementation of this station necessitates the addition of a force main sewer connection within the MD 355 right-of-way, a use that is both reasonable and significant for this portion of the Property. If these Protected Trees could not be impacted, the sewer line connection could not be made, and the development anticipated by the Master Plan and the Zoning Ordinance would not occur. 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.

#### *Variance Findings*

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 requirement to construct a sewer force main to serve the development and the surrounding area. The placement of the force main sewer line down the center of MD 355 reduces a potential for greater impact to Protected Trees on either side of the road if the line were located closer to one side or along a shoulder. The Property contains numerous large trees located within the developable area of the site. Granting the variance to allow land disturbance



within the existing road right-of-way to provide a necessary service to the development and surrounding communities 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 and necessary infrastructure requirements.

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 the variance is a result of the existing conditions and the alignment of the force main to provide a necessary sewer connection, 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 variance does not include the removal of any Protected Trees and the portion of the CRZ impacted is located within the roadway, providing limited water quality benefit. The FCP proposes to reforest or plant native meadow species within the currently unforested stream buffers. This reforestation along the stream valleys will provide an overall water quality benefit.

Mitigation for Trees Subject to the Variance Provision –There is some disturbance within the critical root zones of these seven trees; however, these trees will not be removed, they will receive adequate tree protection measures, the roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is recommended for trees impacted but retained.

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

- f. *provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

The Site Plan provides for safe and well-integrated parking, circulation patterns, building massing, and open spaces and site amenities. The Site Plan creates a network of private roads that connect to Frederick Road with adequate bike and pedestrian connectivity. Parking is adequate to serve the community. The Site Plan also provides well integrated building massing, open space, and site amenities as part of the clustered development.

The primary community recreation area located south of Private Street A, which is a major open space area, will be privately owned and maintained. It is centrally located within the residential development. The primary open space area is also adequately framed by Private Streets A and D which include parallel parking along the north side of Street A and the western side of Street A. Amenities in the central open space area provide unique opportunities for recreation and fitness, ranging from a wetland, meadows, natural surface trails, multi-age playgrounds, a community building, lawn area, and additional green areas. Further, a wide break between the townhomes along the western perimeter allows views into the rural open space for residents and visitors.

The development also includes a network of natural surface trails providing access to environmental features such as the forested areas that connect to the residential development for both residents and visitors. The Application will retain approximately 51.38 acres of existing forest and plant approximately 15.23 acres of new forest, resulting in approximately 66.61 acres of forest on the Property that will either be dedicated to the M-NCPPC Parks or protected in a Category I Conservation Easement. An additional 3.31 acres of forest may be planted should the Applicant choose to create a forest bank. A total of 80.1 percent of the Property will be devoted to rural open space and an additional 4.6 percent for additional open space for recreation and amenities. These open spaces and amenities are well integrated via natural surface trails throughout the Subject Property and connect to sidewalks with clear signage.

*g. substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

The Site Plan substantially conform to the 2014 *Ten Mile Creek Area Limited Amendment* ("Master Plan") . Specific elements that have been finalized as part of the Site Plan include the following:

*Final Stream and Wetland Restoration Plan*

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. (Master Plan, page 22). A Final Stream and Wetland Restoration Plan, which is consistent with the approved Preliminary Stream and Wetland Restoration Plan, was included with the Site Plan Application. The one addition to this plan is the removal of the existing pond and conversion of this area to a wetland. The pond will be drained and the earthen embankment removed. The pond area will be graded to create a stream channel connection and surrounding wetlands that will be planted with a wetland seed mix. Over time, the wetland will evolve as it adjusts to the new elevation and hydrologic conditions. The conversion of the pond to a wetland will be included on the Sediment Control Permit reviewed by MCDPS and the details will also be reviewed by the Maryland Department of the Environment. The plan does not identify any stream reaches that are specifically in need of restoration as the streams are in good condition. The plan does call for the removal of a collapsed foot bridge within the stream as well as trash and debris. As part of the FCP, the unforested stream buffers will either be reforested or planted with native meadow species.

#### *Potential Forest Bank*

The FCP requires approximately 0.64 acres of forest planting to meet the requirements of the Forest Conservation Law. This requirement will be met within the unforested stream buffers. Since all stream buffers within Special Protection Areas must be reforested, the remaining 3.31 acres of unforested stream buffers will also be planted. Since this forest planting is above and beyond the requirements of the Forest Conservation Law, there is an opportunity to create a much-needed forest bank for use by other properties to meet their forest conservation requirements. This opportunity is in accordance with Master Plan recommendations. (*Master Plan, pages 21 and 54*).

#### *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. This discussion is only applicable to the Eastern Lot since this Application does not propose any development on the Western Parcel. As part of the Preliminary Plan approval for this development, the Planning Board granted the Applicant a waiver to allow the use of the 70 dBA Ldn noise level

for the outdoor activity areas for this Application. A Barrier Analysis that determined the mitigation necessary to offset projected noise levels was also reviewed with the Preliminary Plan. The Planning Board approved the Applicant's mitigation proposal based on the Barrier Analysis provided.

The interior spaces are required to meet the 45 dBA Ldn requirement. As conditioned, mitigation through the use of varied construction materials may be required to provide adequate mitigation for indoor spaces impacted by transportation related noise.

*h. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

The Planning Board approved Preliminary Plan No. 120200110, MCPB Resolution No. 20-140 dated February 23, 2021 and found that the Application will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. These findings remain valid.

*i. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

The Property is in the Rural and R-90 Zones and it is compatible with the character of the residential neighborhood. Residential development is not provided on the portion of the Property in the Rural Zone. Aside from the park improvements consisting of a gravel driveway and parking spaces, the Western Parcel will be reserved for parkland which is consistent with the adjacent Ten Mile Creek Conservation Park that is located within the residential neighborhood. The development on the Eastern Lot is also clustered in such a way that is compatible with existing development. Townhomes are part of the development and front along a public street, Frederick Road, which is consistent with the existing townhouse and single-family development in the R-200 zone. The development also utilizes

materials that are seen in adjacent and nearby development and therefore, compatible with the character of the residential neighborhood.

*j. on a property in all other zones, is compatible with existing and approved or pending adjacent development.*

The Subject Property is in the Rural and R-90 Zones; therefore, this finding does not apply.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Section 59-7.3.4.H of the Zoning Ordinance; 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 NOV 15 2021 (which is the date that this resolution is mailed to all parties of record); and

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

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, October 21, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board