



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

**FEB 22 2022**

MCPB No. 22-015  
Preliminary Plan No. 120210250  
Seneca Property  
Date of Hearing: February 3, 2022

**RESOLUTION**

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

WHEREAS, on August 16, 2021, SPI Seneca LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three (3) lots on 7.17 acres of land in the RE-2 zone and Rural Village Center (RVC) Overlay zone, Parcel P708 on Tax Map ES121, located at the east side of Seneca Road (MD Rt. 112), approximately 600 feet south of Darnestown Road (MD Rt. 28) ("Subject Property"), in the Rural West Policy Area and 2002 *Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120210250, Seneca Property ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 21, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 3, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application, subject to certain conditions, by motion of Commissioner Cichy, seconded by Commissioner Rubin, with a vote of 5-0; Chair Anderson, Commissioners Cichy, Patterson, Rubin, and Verma voting in favor.

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210250 to create three (3) lots on the Subject Property, subject to the following conditions:<sup>1</sup>

**General Approval**

1. This Preliminary Plan is limited to three (3) lot(s) for three (3) single-family dwelling units.

**Adequate Public Facilities**

2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

**Plan Validity Period**

3. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

**Outside Agencies**

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated November 29, 2021 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated January 18, 2022 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.

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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.

7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated September 21, 2021 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Well and Septic Section in its letter dated November 24, 2021 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
10. The Planning Board has reviewed and accepts the recommendations of the MCDPS – Fire Department Access and Water Supply Section in its letter dated December 17, 2021 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### **Other Approvals**

11. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of any subsequent Site Plan(s) associated with this Preliminary Plan. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation and bikepaths is determined through site plan review and approval.
12. If the lots or right-of-way configuration or quantities shown on this Preliminary Plan are substantially modified by a site plan amendment, the Applicant must obtain approval of a Preliminary Plan amendment, as applicable, before certification of the site plan amendment.

#### **Environment**

13. Forest Conservation & Tree Save

The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan ("PFCP") No.120210250, approved as part of this Preliminary Plan:

- a) Prior to the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest planting as specified on the approved FFCP. 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.

#### **Frontage Improvements**

14. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
  - a) All land necessary to accommodate forty-six (46) feet from the existing pavement centerline along the Subject Property frontage for Seneca Road (MD 112).
15. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a 10-foot wide sidepath with lighting and street trees, along the Property frontage on MD 112.

#### **Record Plats**

16. There shall be no clearing or grading of the site prior to recordation of plat(s).
17. The record plat must show necessary easements.
18. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

#### **Schools**

19. Prior to issuance of each building permit for a residential dwelling unit, the Applicant must obtain an assessment from MCDPS for Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy, as follows:
  - a) no elementary school UPP required;
  - b) no middle school UPP required; and
  - c) 1.00 of a Tier 1 high school UPP.

#### **Certified Preliminary Plan**

20. The Applicant must include all agency approval letters, including stormwater management concept, and Preliminary Plan Resolution on the approval or cover sheet(s).

21. 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, and site circulation 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.*

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

- a) Update the road cross-section and Preliminary Plan drawing to show a swale and pedestrian lighting along the Property frontage on MD 112.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Preliminary Plan No. 120210250, Seneca Property, 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. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision and proposed single-unit living use, taking into account the RE-2 zoning and recommendations included in the 2002 *Potomac Subregion Master Plan* and Rural Village Center ("RVC") Overlay Zone. Based on the RE-2 zoning, the maximum density permitted is 3 dwelling units, consistent with the proposed subdivision. Single-unit Living is a permitted use in the RE-2 zone and not a prohibited use in the RVC Overlay Zone, per Section 4.9.14.B.2.b. Per section 4.9.14.D.1.a. construction of a new building on residentially zoned property in the RVC Overlay requires Site Plan approval. Site Plan No. 820210200, which is being reviewed concurrently, satisfies this requirement. The lots were reviewed for compliance with the dimensional requirements of the RE-2 zone, including area, frontage, width, and setbacks as specified in the Zoning Ordinance.



As discussed in finding 2 (below), the Preliminary Plan is consistent with the following purpose of the RVC Overlay Zone in Section 4.9.14 of the Zoning Ordinance:

- 1. Create attractive, cohesive, and pedestrian-friendly rural village centers, consisting of a mix of uses.*
- 2. Draw upon the open, green character of the surrounding area, emphasizing this character through streetscape design, open space, and landscaping.*
- 3. Maintain and enhance the rural village character through compatible scale, massing, siting, and setbacks for new and expanded uses.*
- 4. Emphasize the pedestrian and bicycle circulation through street design, including streetscape and traffic calming, and trail networks.*
- 5. Encourage a variety of uses that serve the needs of the local community, including mixed-use buildings that provide housing and commercial uses to the extent allowed in the underlying zone.*
- 6. Provide opportunities for appropriately scaled new and existing business expansion, while keeping the commercial area compact and low density.*

As shown on the Preliminary Plan, each lot can adequately accommodate the proposed one-family detached house, driveway, stormwater management facilities, conservation easements, septic systems, and public utility easements. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

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

The Preliminary Plan is consistent with the 2002 *Potomac Subregion Master Plan*, the 2018 *Bicycle Master Plan*, and the draft 2021 *Complete Streets Design Guidelines*.

2002 Potomac Subregion Master Plan

The Subject Property is located in Darnestown, the westernmost portion of the 2002 *Potomac Subregion Master Plan*. The Subject Property is within the Darnestown Rural Village Center ("Village Center") of the Master Plan, which is described on page 98 through 103 of the Master Plan.

Land Use

The Master Plan recommended applying the RE-2/Country Inn zone to 11 acres on the east side of Seneca Drive, including on the Subject Property. (Note that

the Country Inn zone was removed from the Property with the Zoning Ordinance rewrite in 2014.) The Master Plan also recommended the creation of a new overlay zone, the Rural Village Center Overlay (RVC) Overlay Zone, which was applied to all properties in the Darnestown Village Center<sup>2</sup>. The overlay zone was recommended, because the combination of zoning and septic requirements that were in place at the time prohibited certain desirable uses, such as a restaurant. The new overlay zone was designed to allow compatible uses in a rural village pattern. The overlay zone was intended to “retain and enhance the commercial crossroads character through compatible scale, massing, siting, and setbacks for new and expanded uses; to encourage a variety of uses that serve the needs of the local community; to provide opportunities for new and existing business expansion, while keeping the commercial area compact and low density; to create a pedestrian-friendly commercial area; and to draw on the open, green character of the surrounding area, emphasizing this character through streetscape design.”

The Darnestown Village Concept drawing on page 101 of the Master Plan does not show the Subject Property. The Property appears to have been added to the Rural Village Center to allow it to be used for the septic fields to serve the commercial property just to the north where a country inn/restaurant was envisioned. This Property is referred to in the Master Plan as “residential”, so while most of the intent of the overlay zone was to provide a “pedestrian-friendly rural village center, consisting primarily of retail uses,” this Property was never intended to be used for anything other than residential uses or to provide a septic area adjacent to a commercial use. However, the overall goal of providing a pedestrian-friendly environment and “green character” apply here as well as to the other parts of the Village Center.

While not all of the Master Plan recommendations for the Village Center apply to this residential property, the Application meets the following design principle envisioned by the Master Plan:

- *Provide green frontage to development with extensive planting and streetscaping, and green buffers between commercial and residential development.*
- *Provide an attractive, rural village center at Darnestown and Seneca Roads that is pedestrian oriented and compatible with the adjacent areas.*
- *Locate buildings along Darnestown and Seneca Roads to create a strong street definition; provide parking in the rear.*

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<sup>2</sup> Due to a mapping error, the Subject Property was not included in the RVC Overlay Zone on the original Sectional Map Amendment (G-800) which was adopted in October 2002. On March 31, 2009, by District Council Resolution No.16-914 the boundary of the RVC was corrected, consistent with Map 25 on page 100 of the 2002 *Potomac Subregion Master Plan*.

- *Provide continuous "Main Street" development along Darnestown and Seneca Roads within the village center.*
- *Design streets that include traffic calming features such as specially paved crosswalks, that minimize curb cuts and that include sidewalks, providing continuous pedestrian and bicycle circulation.*

The Application includes three approximately 2-acre residential lots accessed via two new driveways to Seneca Road. A 10-foot wide shared use path along the entire Property frontage, parallel to the road, will provide future pedestrian and bicycle connections to the Village Center. Curb cuts have been minimized along the frontage by providing a shared driveway for two of the lots and providing ample separation from the second driveway to the south.

Robust streetscaping is being provided along the Property frontage. The Master Plan depicts a streetscape for Seneca Road in the RVC Overlay Zone which is primarily a mixed-use and commercial uses. The Application has continued the streetscape, as envisioned the Master Plan (depicted in the Staff Report with a row of fringe trees and dogwoods in the right-of-way (where there are existing overhead power lines) separating the road and shared use path. Along the front of each lot, on the east side of the path, a row of shade trees will be planted, including Green Mountain Sugar Maples, Red Woods, and Black Gums. The houses are setback in a compatible manner, stepping back from Seneca Road moving south, providing a transitioning from the core of the Village Center towards the existing single-family detached unit to the south. This siting of the homes is important for the character of the neighborhood, so the front setback of the houses step back accordingly with the house on Lot 1 at approximately 148 feet, Lot 2 at approximately 184 feet, Lot 3 at approximately 220 feet and the existing house to the south at approximately 410 feet.

#### 2018 Master Plan of Highways and Transitways

The Property is located on Seneca Road approximately 900 feet northeast of Springfield Road in the Darnestown/Potomac Area. The 2018 *Master Plan of Highways and Transitways* identifies Seneca Road as an Arterial Road (A-29) with two lanes and a master planned right-of-way of 80 feet. As conditioned, the Applicant is dedicating a total of 46 feet from the centerline of the road; 40 feet to comply with the Master Planned right-of-way width and 6 additional feet necessary to accommodate the proposed shared use path.

#### 2018 Bicycle Master Plan and draft 2021 Complete Streets Design Guide

The 2018 *Bicycle Master Plan (BMP)* recommends bikeable shoulders along Seneca Road; currently the road has no shoulders through this section. Seneca Road is identified as a Country Connector in the draft 2021 *Complete Streets Design Guide*.



The Applicant is constructing a 10-ft. wide shared use path along the frontage of the Subject Property on Seneca Road, which is approximately 500 feet in length, instead of constructing the Bicycle Master Planned bikeable shoulders. The Applicant is dedicating enough right-of-way to reserve 8 feet of right-of-way for future construction of a bikeable shoulder. This is supported by Staff, MDSHA and MCDOT as the shared use path would provide both bike and pedestrian access across the frontage, improving neighborhood accessibility given the location in central Darnestown, a mixed-use community. Constructing a shared use path as opposed to a bikeable shoulder is listed as an acceptable alternative along a Country Connector in the *Draft Complete Streets Design Guide*. Based on the *Complete Streets Design Guidelines* any development or redevelopment of the properties to the north and south of the Subject Property will require the continuation of the proposed shared use path. Additionally, constructing approximately 500 linear feet of bikeable shoulders along the Property frontage would require relocation of eighty (8) utility poles, the cost of which is disproportionate to the scale and impact of the proposed three (3) lot subdivision. Constructing the proposed shared use path eliminates the need to relocate the existing utility poles, however, it does require six feet of additional right-of-way, in excess of what is recommended by the BMP. Accordingly, the Applicant is required to dedicate 46 feet of right-of-way to construct the shared use path in substantial conformance with the applicable Master Plan.

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

a) Roads and Other Transportation Facilities

The Application provides frontage improvements on Seneca Road in accordance with the Master Plan Highways and Bicycle Master Plan, as discussed above. The proposed lots will be accessed via a 20 foot wide shared driveway, to serve Lot 1 and 2 and a single driveway serving Lot 3.

The Application has been evaluated by MDSHA, which supports the transportation elements of the Preliminary Plan as indicated in correspondence dated January 18, 2021. As conditioned, the proposed vehicular and pedestrian access for the lots will be adequate with the proposed public improvements.

b) Local Area Transportation Review (LATR)

The Applicant submitted a transportation exemption statement, dated June 29, 2021, showing that three single-family detached units is estimated to generate 50 or fewer additional peak-hour person trips, therefore, the

Application is exempt from review under the 2021 *LATR Guidelines*. The Property is located within the Rural West Policy Area and the Application satisfied the Adequate Public Facilities (APF) test under the 2020-2024 *Growth and Infrastructure Policy*.

c) School Adequacy

**Overview and Applicable School Test**

The Application located at 14124 Seneca Road, is subject to the FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021. This Application proposes 3 single-family detached units.

**School Adequacy Test**

The Application is served by Darnestown ES, Lakelands MS and Northwest HS. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

**Table 1 – Applicable FY2022 School Adequacy.**

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Darnestown ES	432	336	77.8%	+96	No UPP	181	198	248
Lakelands Park MS	1,131	1,094	96.7%	+37	No UPP	163	264	433
Northwest HS	2,286	2,597	113.6%	-311	Tier 1 UPP		147	490

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY22 Annual School Test, Darnestown ES and Lakelands MS do not require any UPP. However, development approved within the Northwest HS service area for this Application is subject to a Tier 1 UPP as identified in Table 1. If the project is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

**Calculation of Student Enrollment Impacts**

To calculate the number of students generated by the proposed amendment, 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 3 units that are not age-restricted, the Application is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

**Table 2 – 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	3	0.185	0.555	0.108	0.324	0.154	0.462
SF Attached	0	0.225	0.000	0.123	0.000	0.159	0.000
MF Low-rise	0	0.107	0.000	0.058	0.000	0.070	0.000
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
<b>TOTALS</b>	<b>3</b>		<b>0</b>		<b>0</b>		<b>0</b>

As shown in Table 2, on average, this Application is estimated to generate no elementary school students, no middle school students and no high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 1; therefore, no additional UPPs are required and neither are partial payments across multiple UPP tiers.

#### **Analysis Conclusion and Condition of Approval**

Prior to issuance of each building permit for the 3 single-family detached units in this Site Plan, the Applicant must obtain an assessment from Montgomery County Department of Permitting Services (MCDPS) for Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy, as follows:

- a. no elementary school UPP required;
- b. no middle school UPP required; and
- c. a Tier 1 high school UPP per unit.

Montgomery County may modify the per unit UPP rates prior to payment of any required UPPs. The Applicant must pay the above UPPs to MCDPS based on the rates in effect at the time of payment.

#### **d) Other Public Facilities and Services**



Other public facilities and services are available and adequate to serve the proposed lots. Each lot will be served by an on-site septic system and new public water service. To serve each lot, a new waterline will tie into the existing 12-inch diameter water main in the Seneca Road right-of-way, which is adequately sized to serve the proposed dwellings. A new septic system will be installed on each lot. The use of public water and individual septic is consistent with the existing W-1 and S-6 services categories designated for the Property. The Application has been reviewed by the MCDPS Well and Septic Section, which determined the proposed septic locations are acceptable as shown on the approved septic plan dated November 24, 2021.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Property has adequate access for fire and rescue as shown on the approved Fire Department Access Plan dated December 17, 2021.

Electric and telecommunications services are available and adequate to serve the proposed lots. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the *2020-2024 Growth and Infrastructure Policy*. The Application can be adequately served by all applicable public facilities and services.

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

A. Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420211460 for this Property was approved in March 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD calls out the site to be a total of 7.17 acres located within both the Muddy Branch and the Great Seneca Creek watersheds, each watershed is classified as a Use Class I-P stream by the State of Maryland. The Subject Property contains no forest but does have 10 onsite trees with a diameter breast height ("DBH") of 30" or more. The Property contains no streams, wetlands or other sensitive environmental features.

B. Forest Conservation

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

The Applicant has submitted a Preliminary/Final Forest Conservation Plan ("FFCP") with the current Development Plan Applications under plan numbers 120210250 and 820210200. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned RE-2 and is assigned a Land Use Category of Medium Density Residential ("MDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation requirement of 20% and a conservation threshold of 25% of the Net Tract Area.

The FFCP shows a total Net Tract Area of 7.33 acres for the Subject Property. This includes the net tract of 7.17 acres plus 0.16 acres for offsite work associated with this Application. There is a total of 0.0 acres of forest on the Subject Property. This results in an afforestation requirement of 1.47 acres. The Applicant proposes to satisfy this requirement by providing 1.47 acres of onsite afforestation plantings and protecting this planted forest with a Category I Conservation Easement. It has been Planning Board policy not to place conservation easements on properties that are 2.0 acres or less in size since this practice has led to encroachments into the conservation easements and violation proceedings. However, in this case, placing Category I Conservation Easements on these individual lots is acceptable for multiple reasons.

First, the lots exceed the minimum lot size specified by the Planning Board. In addition, the distance between the proposed homes and the conservation easement are in excess of 190-feet which provides a property owner enough space to have unfettered use of the area behind their house without encroaching into the conservation easement. The areas behind the homes on Lots 1 and 2 contain the properties septic fields which will preclude moving the location of the home closer to the conservation easement and also limits the construction of any structures in the area near the conservation easement. The home on Lot 3 is 190 feet from the proposed conservation easement and the location of the building is restricted by the concurrent Site Plan. In addition, permanent Category I Forest Conservation signage is being installed along the perimeter of the afforestation area to deter accidental encroachments. Finally, the Category I Conservation Easement proposed for this development connects to a larger existing Category I Conservation Easement located offsite on a neighboring property in the northeast corner of the Subject Property. For these reasons, in this specific situation, placing Category I



Conservation Easement on these lots is acceptable. As discussed above, this easement area is appropriate for these lots.

### C. Forest Conservation Variance

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

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

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

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

Granting the variance will not confer a special privilege on the Applicant as the removal of the seven trees is due to the location of the trees and necessary site design requirement. The Applicant proposes removal of the trees with mitigation. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

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

The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this Application, including street frontage improvements.

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

The variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer, wetland or special protection area. The Application proposes mitigation for the removal of these seven trees by planting larger caliper trees on-site. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

#### Mitigation for Trees Subject to the Variance Provision

There are seven (7) Protected Trees proposed for removal in this variance request, resulting in a total of 305.0 inches of DBH being removed. These seven (7) trees being removed are isolated trees located primarily along the Property frontage with Seneca Road with 2 of these trees, Trees #4 and #6, located near Seneca Road, but along the northern Property line. Five of these 7 trees will have significant impacts to their CRZs with the required frontage improvements along Seneca Road. The remaining two trees, Trees #4 and #6, are in a state of decline and will have impacts to their CRZs due to grading and construction. These two trees may become hazard trees in the future given their close proximity to the proposed house on Lot 1 and it is prudent to remove those trees now.

To compensate for the removal of these seven (7) trees, the Board approved the Applicant's proposal to provide mitigation for the Protected tree loss by replacing the total number of DBH removed with  $\frac{1}{4}$  of the amount of inches replanted. This results in a total mitigation of 76.25 inches of replanted trees. In this case, the Applicant proposes to plant 26 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. Eleven (11) of the mitigation trees will be planted parallel to the shared use path and the remaining fifteen (15) trees will be planted throughout the proposed lots. No mitigation is required for trees that are impacted but retained. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from the MCDPS Water Resources Section on September 21, 2021. Stormwater management goals will be met utilizing environmental site design practices including micro-infiltration trenches, drywells, and landscape infiltration will be used to manage and treat stormwater on the individual lots.

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 22 2022 (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).

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#### 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 Rubin, with Chair Anderson and Commissioners Cichy, Patterson, Verma, and Rubin voting in favor of the motion at its regular meeting held on Thursday, February 10, 2022, in Wheaton, Maryland.



Casey Anderson, Chair  
Montgomery County Planning Board