

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-033
Preliminary Plan No. 11987271D
Milestone Innovation Center
Date of Hearing: March 17, 2022

APR 01 2022

RESOLUTION

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

WHEREAS, on February 7, 1991, the Planning Board, approved Preliminary Plan No. 119872710, to create 3 lots on 98.9 acres of land in the I-3 Zone located on the north side of I-270, between Ridge Road and Dorsey Mill Road ("Subject Property"), in the 1989 Germantown Master Plan area; and

WHEREAS, on April 24, 2003, the Planning Board approved Preliminary Plan No. 11987271A, Milestone Business Park, to extend the APF determination for five years beyond the existing expiration date; and

WHEREAS, on February 3, 2011, the Planning Board approved Preliminary Plan No. 11987271B, Milestone Business Park, to grant a new validity period for the APF determination; and

WHEREAS, on July 16, 2021, Mark Matan ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plans, to allow three (3) new buildings consisting of 308,500 square feet of Research and Development and 161,500 square feet of Office uses on 44.33 acres of land in the CR-2.0, C-1.75, R-0.5, H-125T Zone and Germantown Transit Mixed Use Overlay Zone, located on the north side of I-270, between Ridge Road and Dorsey Mill Road ("Subject Property"), in the 2009 *Germantown Employment Area Sector Plan* ("Master Plan") area; and

WHEREAS Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11987271D, Milestone Innovation Center ("Preliminary Plan," "Amendment," or "Application"); and

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

WHEREAS, by request of the Applicant and as approved by Planning Staff on March 7, 2022, Preliminary Plan Amendment No. 11987271C and Site Plan Amendment No. 82001009E were vacated; and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 7, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 17, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions, on motion of Commissioner Verma, seconded by Commissioner Cichy, with a vote of 4-0; Chair Anderson, Commissioners Cichy, Rubin, and Verma voting in favor and with Commissioner Patterson being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 11987271D to allow 308,500 square feet of Research and Development and 161,500 square feet of Office uses in three (3) new buildings. All valid previously approved preliminary plan conditions remain in full force and effect. All site development elements shown on the latest electronic version of the Preliminary Plan as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:¹

GENERAL APPROVAL

1. Approval under this Preliminary Plan Amendment is limited to 12 parcels (lots) for a maximum density of 1,125,000 square feet (or 0.39 Floor Area Ratio ("FAR")) of total development limited to 746,500 square feet of Office, 308,500 square feet of Research and Development and 70,000 square feet of Light Industrial.

PLAN VALIDITY PERIOD

2. 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.

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

ADEQUATE PUBLIC FACILITIES

3. 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).

TRANSPORTATION

4. The Applicant must provide commuter parking spaces, pursuant to Montgomery County Department of Transportation ("MCDOT") approval letter dated March 7, 2022.
5. Before the release of the first use and occupancy permit (other than core and shell), the Applicant must construct the following master-planned pedestrian and bicycle facilities. The exact location, design and construction of which must comply with requirements set forth by the Montgomery County Department of Transportation, Division of Traffic Engineering and Operations.
 - a) Milestone Center Court 11-foot-wide shared use path with 6-foot-wide buffer from traffic, to be constructed from Milestone Center Drive and continuing to Ridge Road.
 - b) Construct a paved, 5-foot-wide pedestrian path along the frontage of the northern transit easement right-of-way to be field located to limit environmental impacts.
6. The Applicant must provide Milestone Center Drive and Private Street A, including any sidewalks, bikeways, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
 - a) The record plat must show the Private Road in a separate parcel.
 - b) The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Road recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq., as may be amended from time to time. Additional conditions related to private roads may be determined at site plan.
 - c) Before issuance of the first building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the road has been designed for safe use

including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

OUTSIDE AGENCIES

7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 7, 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 MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") Water Resources Section in its stormwater management concept letter dated February 7, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which the MCDPS Water Resources Section may amend if the amendments do not conflict with other conditions of the Preliminary Plan approval. The MCDPS Water Resources Section will review, approve, and inspect all landscaping within the Storm Water Management easements and facilities.
9. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated February 4, 2022 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.
10. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated February 25, 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.

FUTURE SITE PLANS

11. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan or site plan amendment.
12. Future site plans with an FAR of 0.50 or higher must meet the Optional Method Development Standard requirements.

RECORD PLATS

13. No clearing, grading or recording of plats prior to Certified Site Plan approval.

EASEMENTS

14. All necessary easements must be shown on the Record Plat.

PARKING AGREEMENT

15. The Applicant shall enter into a joint use agreement for parking pursuant to Sect. 59.6.2.3.G if there is separate operation or ownership of the buildings.

CERTIFIED PRELIMINARY PLAN

16. The Certified Preliminary Plan must contain the following note: *"Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height and lot coverage. Other limitations for site development may also be included in the conditions of the Planning Board's approval."*
17. Prior to the approval of the Certified Preliminary Plan, the following revisions must be made and/or information provided subject to Staff review and approval:
 - a) Ensure consistency between the data table in the Staff Report and the Preliminary Plan.
 - b) On the cover sheet of the preliminary plan add the following note, *"The Applicant shall enter into a joint use agreement for parking pursuant to Sect. 59.6.2.3.G if there is separate operation or ownership of the buildings."*
 - c) Revise applicable plan sheets to include a separate parcel for the central plaza west of Parcel EE.
 - d) Revise applicable sheets to include a label for the new private street as "Private Street A".
 - e) Revise applicable sheets to include a paved, five-foot-wide pedestrian path in the northern transit easement. Provide notation that the exact location may be field adjusted to avoid trees and other significant natural features.
 - f) Revise applicable sheets to include an 11-foot-wide shared use path with 6-foot-wide buffer from traffic along Milestone Center Court from Milestone Center Drive to Ridge Road per Condition 5a.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or 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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

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 size, width, shape, and orientation of the lots (parcels) are appropriate given the location of the subdivision and in consideration of the recommendations in the Master Plan. The Preliminary Plan Amendment will reconfigure the parcels to accommodate Buildings 5, 6, 7 and two parking garages, Milestone Center Drive and a new private street. The size, width, and shape of the Subject Property is established by the I-270 interchange and the CCT and the parcel pattern is one that allows for commercial uses envisioned in the Master Plan. Therefore, the Preliminary Plan meets the requirements of Chapter 50, Subdivision Regulations.

The Preliminary Plan also meets the requirements of Chapter 59, the Zoning Ordinance. The approved uses and density comply with the requirements of the CR-2.0 Zone and Germantown Transit Mixed Use Overlay Zone. Additional details regarding compliance with the CR Zone standards and Overlay Zone are provided in Table 5 below. The parcels are appropriately sized to accommodate the existing and approved uses and to meet building setback requirements within the Zoning Ordinance.

Location and Design of Roads

The design of roads is appropriate for the subdivision. Milestone Center Drive, a private road, serves as the central spine for the subject property and connects to the larger public road network. Milestone Center Court is a minor street serving the southernmost buildings, built as an improved driveway with sidewalks on both sides as well as providing limited shade trees. A new private street (Private Street A) will improve circulation for vehicles and pedestrians. Due to the location of the Property wrapped by I-270 to the west and Ridge Road to the east, with no direct connection to

either road, these roads are not expected to convey local or regional traffic beyond that generated by the Property itself.

Transportation Waivers & Modification Requests - Private Roads

The Applicant has provided a justification for the use of private streets contained within the Statement of Justification. The private roadway is a loop connecting Milestone Center Drive and Milestone Center Court and will be lined with sidewalks and street trees to provide pedestrian circulation, lighting and tree canopy with shade. These roads have been built and have functioned safely over the years since the original approval of the Preliminary Plan. These roads have several non-standard elements that will remain as they have been constructed with earlier phases of the development. In particular, Buildings 2 and 3 include large truck accessible service areas that directly access Milestone Center Court. The large crossing distance for pedestrians will be mitigated with improved markings and the use of differentiating materials. Additionally, head-in parking behind Building 2 will remain. The elements within this private roadway parcel are standard in nature and will be placed within a covenant. Due to the low volume and slow speeds of vehicular traffic primarily providing access to site parking lots, the reduced cross sections of these roads will continue to function safely. The provision of adequate sidewalk connections on both sides of these streets will continue to provide safe access for pedestrians.

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

Land Use

The Preliminary Plan conforms to the recommendations in the 2009 *Germantown Employment Area Sector Plan* ("Master Plan"). The Subject Property is located in the Milestone North District of the Master Plan. The Master Plan states that Milestone North property should be developed at an average density of 1.0 FAR with a mix of research and development, employment, technology, street level retail, restaurants, and new housing and that new residential should be oriented to the existing residential areas. Residential uses are not to exceed 20 percent of total development on this Property. Areas for other nonresidential and or residential uses are set aside for future development with subsequent submissions. The Applicant is requesting to build a total of 308,500 square feet of research and development and 161,500 square feet of additional office uses in three buildings (Buildings 5, 6, and 7) located along Private Street A. Parking Garage B will be located between Building 5 and 6 and Garage C will be located between Building 6 and 7. The total density for the Application, including existing density, results in a floor area ratio (FAR) of 0.39 which is less than the allowed amount and therefore, the Application is in conformance with the Master Plan.

The Master Plan also recommends locating buildings adjacent to the street to form a building line of the sidewalk and street that form public spaces. The Master Plan also states that each district should contain a variety of plazas, gathering places, and urban spaces and that such spaces should be defined by buildings. The loop drive is planned to

be upgraded to a street with sidewalks and street trees so that all new structures front onto the new street and expand the block structure of the development. An existing central plaza to remain, with two existing buildings fronting it, will be upgraded to a well landscaped open space for the entire development. The plans show a surface parking area on the east side of the plaza as a potential pad site for a future building framing the central plaza.

Streetscape

Besides buildings being placed close to street the Master Plan also calls for an expanded network of roadways, streets, mid-block pedestrian connections, sidewalks, trails, and bikeways that link the community to desired destinations. Roadway and street designs should promote pedestrian use with investment in streetscape elements including pedestrian crossing markings and signals, landscaping, street trees, and benches. The Master Plan further states that street trees should be spaced closely together to provide tree cover and environmental benefits to the Germantown community.

The Applicant does not demonstrate adequate street trees along Milestone Center Drive and Private Street A. As conditioned, the Applicant will resolve this issue prior to the certification of the Site Plan.

Setback Requirements

The Master Plan requires that buildings setback from I-270 should maintain an existing setback of 200-feet from the current right-of-way (Master Plan, page 51). All buildings will provide a 200-foot setback from I-270 and therefore, the Application is in general conformance with the Master Plan.

Design Guidelines

The 2010 *Germantown Urban Design Guidelines* (Design Guidelines) provide general guidance on Street Character, Gathering Spaces, and Buildings to create an attractive, cohesive, and walkable public realm that is to be enjoyed by both residents and workers.

Street Character (Design Guidelines, page 12)

With Street Character, the Design Guidelines discuss five street types. The two that are most applicable to the Milestone North End District are Main Streets and Local Streets types. The Design Guidelines describe Main Streets as two- to four-lane roads with a single row of closely spaced, tall growing street trees in lawn panels or tree boxes, trees in the median (if divided), pedestrian scaled lighting, and on-street parking where permitted. Local Streets are described as two-lane streets with pedestrian scaled lighting, closely spaced, single row of tall growing trees, sidewalks on both sides, and on street parking where permitted. In accordance with the Design Guidelines, the Applicant is planning to upgrade the loop driveway to a street with sidewalks and street trees. Milestone Center Drive will also have street trees.

Gathering Spaces (Design Guidelines, page 18)

The Design Guidelines discusses various types of gathering spaces including urban plazas, which are to be placed in highly visible locations and animated with adjacent uses. The Subject Property is identified to include an urban plaza located in a highly visible area along Milestone Center Drive. These urban plazas should be privately developed as public use space. The Subject Property includes a large central plaza with seating, shading and landscaping that will serve as public open space. This central plaza will remain and be upgraded to serve as a well landscaped open space for the office park that is adjacent to Milestone Center Drive.

Buildings (Design Guidelines, page 20)

The Design Guidelines emphasize that the building form in Germantown should evolve from an existing suburban development pattern into an urban form with buildings lining streets and parking located to the rear or mid-block. Buildings should create building walls that define the street and sidewalk, with primary entrances at sidewalk level, and service and loading in the rear. In accordance with the Design Guidelines, the Application will have buildings placed along street frontages with parking to the side and rear of buildings. The parking garages that are located adjacent to the street will have facades that are broken into bays, similar to the adjacent buildings. Screening along the façade of the parking garages will also be provided at the ground floor.

Transportation Facilities

The 2009 *Germantown Employment Area Sector Plan*, and the 2005 *Countywide Bikeways Functional Master Plan* ("Bikeways Master Plan") include the following nearby roadway/bikeway facilities:

- **Ridge Road (MD 27):** A controlled major highway with six divided travel lanes (three in each direction) and a minimum right-of-way of 150 feet. The Bikeways Master Plan, Master Plan, and *Complete Streets Design Guide* recommend shared use paths on both sides of the road; a shared use path currently exists along the frontage of the Subject Property.
- **Corridor Cities Transitway:** A CCT alignment is shown traversing the north side of the Property between Milestone Center Drive and Observation Drive in the Master Plan. However, this recommendation will be supplanted by a recommendation for a Corridor Connector as part of the Corridor Forward Plan, instead to be constructed along Observation Drive to the north of the Property. An easement area for the CCT transitway had been dedicated previously by the Applicant.
- **Park and Ride Facility:** The Master Plan calls for a 250 space park-and-ride facility on both the east and west sides of I-270 (Master Plan, page 65). The Applicant already has a recorded plat (No. 21774, note #9) that has reserved space for a 170-space park-and-ride facility on Parcel J on this Property. As conditioned, the Applicant will need to demonstrate that a Park and Ride facility can be accommodated. This may be vacated, in the event MCDOT and Planning Staff

determines that a Park and Ride is no longer needed. As conditioned, the Application will continue to be in substantial conformance with the Master Plan.

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

Transportation

The Preliminary Plan has been evaluated by Planning Staff, the Montgomery County Department of Transportation, the Montgomery County Department of Fire and Rescue Services, and the Maryland State Highway Administration, all of which support the transportation elements of the Preliminary Plan. The Planning Board finds the access to the Property, as shown on the Preliminary Plan, to be adequate to serve the traffic generated by the development. The internal and external pedestrian circulation and walkways as shown on the Preliminary Plan will continue to provide adequate multimodal connectivity.

Local Area Transportation Review (LATR)

The Preliminary Plan meets the requirements of the 2021 LATR guidelines. It is exempt from additional review as the trips produced fall below the approved cap limit. With the Applicant vacating Preliminary Plan Amendment C, the Preliminary Plan is revising Preliminary Plan Amendment 11987271B, which permitted up to 908,000 sf square feet of office space. At the time of that approval, 480,000 square feet of office use had been constructed, with an additional 428,000 square feet of office approved for future use, or the trip equivalent. This Application amends this approval by converting a portion of these trips from the office use cap into the Research and Development use. Preliminary Plan Amendment 11987271B allowed up to 1659 AM and 1435 PM peak trips as a cap. This Application, along with the Site Plan Amendment, further clarifies the existing and proposed land uses into office, light industrial, and Research and Development uses for trip purposes, accounting for them cumulatively. In other words, both the trips of the existing uses (585,000 square feet of office and 70,000 square feet of warehouse) and proposed new uses (308,500 square feet of Research and Development and 161,500 square feet of office) are calculated (Table 1) and compared against the total trip cap (Approved). The cumulative uses remain well below the available trip cap.

Table 1 – Trip Generation (Vehicle trips calculated using 10th Edition of ITE Guidelines. Person trips adjusted according to policy area and 2021 LATR methodology)

Development	Size	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Approved (Credit)							
Office (ITE 710)	908,000 sf	(1443)	(216)	(1659)	(187)	(1248)	(1435)

Approved							
Office – Total (ITE 710)	746,500 sf	626	102	728	123	646	769
R&D (ITE 760)	308,500 sf	97	33	130	23	128	151
Light Industrial	70,000 sf	30	4	34	4	25	29
Net New Vehicle Trips		-656	-73	-729	-35	-427	-462
LATR Adjusted Net New Person Trips		--	--	-1011	--	--	-641

Other Adequate Public Facilities

Other public facilities and services are available and will be adequate to serve the development. The Subject Property is in water and sewer categories W-1 and S-1, respectively, and has access to existing public utilities. Other utilities including electric and telecommunications services are adequate to serve the development. The Application has been reviewed by the Montgomery County Department of Fire and Rescue Service and the Water Resources Section who have determined that the development has adequate access for fire and rescue vehicles and has adequate stormwater management facilities. Due to the non-residential use, the Preliminary Plan is not subject to the Annual School Test. Other public facilities and services, such as police stations, and health services are currently operating within the standards set by the Growth and Infrastructure Policy currently in effect.

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

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420220340 for the Subject Property was approved on September 28, 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 44.33 acres located within the Little Seneca Creek watershed, classified as a Use Class IV-P stream by the State of Maryland. The Subject Property contains no streams, wetlands, springs, seeps or other environmentally sensitive features. However, the Subject Property does contain 0.30 acres of forest and one onsite tree with a diameter breast height (“DBH”) of 30” or more.

Forest Conservation Plan

The Subject Property received two Forest Conservation Exemptions in the past. Both Forest Conservation Exemptions, Plan Nos. 41999237E and 42015145E, were granted under the 2A-5(k) exemption category. The Applicant has submitted a FFCP with the current Applications under plan numbers 11987271D and 82001009G. This Application does not qualify for a Forest Conservation Exemption because the Applicant is now re-

subdividing the Property and this action excludes the Application from the previously request Forest Conservation Exemption category and no other exemption category is applicable to this Property.

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 CR-2.0 Zone, C-1.75, R-0.5, H-125T and is assigned a Land Use Category of Mixed Use Development ("MPD") 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 threshold of 15 percent and a conservation threshold of 20 percent of the net tract area. The FFCP shows a total net tract area of 44.33 acres for the Subject Property. There is a total of 0.30 acres of forest on the Subject Property which will be removed. This results in an afforestation requirement of 6.95 acres. The Applicant satisfies this requirement by taking this requirement to an off-site forest bank or paying the fee-in-lieu if no forest bank is available.

Forest Conservation Variance

Section 22A-12(b)(3) of 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 trees, including removal of the subject tree or disturbance within the 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater 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.

Variance Request

The Applicant submitted a variance request in a letter dated January 18, 2022. The Application results in the removal of one (1) tree that is 30-inches (30") or greater DBH and is considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the necessary layout of the development

on the Property, Montgomery County agency requirements, and the location of the subject tree. The tree requested to be removed is currently located within a planting island in a parking lot. The tree is shown to be within the building envelope of Building No. 7, as shown on the FFCP, in the eastern corner of the Subject Property.

The inability to remove this tree would prevent the construction of Building 7. Building 7 is a three-story structure providing 85,000 square feet of Research & Development and Office uses. The inability to construct Building 7 would impact the use of the Property as a biotech innovation center and would adversely impact the layout of the remainder of the buildings on the Subject Property to compensate for the inability to construct Building 7. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to construct a key portion of this Application, which is a reasonable and significant use of the Property.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Variance Findings

The Planning Board must make the following findings when granting a requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*
Granting the variance will not confer a special privilege on the Applicant as the removal of the one tree is due to the location of the tree and necessary site design requirement. The Applicant will remove the tree with mitigation. Therefore, 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this Application.
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*
The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.
4. *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 Protected Tree being removed is not located within a stream buffer, wetland or special protection area. The Application includes mitigation for the removal of this tree 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 is 1 Protected Tree, Tree #76, for removal in this variance request, resulting in a total of 30.2 inches of DBH being removed. This tree being removed is an isolated tree located within an existing parking lot landscape island. This area is within the buildout of Building 7.

To compensate for the removal of this Protected Tree, the Applicant will 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 7.55 inches of replanted trees. In this case, the Applicant will plant three -inch 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. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

The Planning Board approves of the variance request.

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

The stormwater management concept meets the required stormwater management goals via the use of micro-biofiltration, permeable concrete, and structural management facilities. MCDPS Water Resources Section, on February 7, 2022, also found the stormwater concept for this Site to be acceptable. The Planning Board finds that the Preliminary Plan complies with Chapter 19 of the Montgomery County Code.

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

There is no record or other evidence to suggest that a burial site is located within the boundary of the Subject Property. Therefore, this finding does not apply.

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

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 01 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).

* * * * *

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 Rubin, seconded by Vice Chair Verma, with Chair Anderson and Vice Chair Verma, and Commissioners Cichy and Rubin voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, March 31, 2022, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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