

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

AUG 10 2022

MCPB No. 22-078
Preliminary Plan No. 120220010
Miles Coppola
Date of Hearing: July 21, 2022

RESOLUTION

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

WHEREAS, on September 9, 2021, Brookfield Washington LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create 159 lots for a residential development consisting of 144 townhouse units and 192 multi-family units, including 15 percent MPDUs, for a total of 336 dwelling units on 98.35 acres of land in the R-90, R-200, CRT-2.0, C-2.0, R-2.0, H-120, and Clarksburg East Environmental Overlay zones, located west of the intersection of Frederick Road/MD355 and Clarksburg Road/MD 121, and north of I-270 ("Subject Property"), in the Clarksburg Policy Area and *1994 Clarksburg Master Plan & Hyattstown Special Study Area & 2014 Ten Mile Creek Area Limited Amendment* area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220010, Miles Coppola ("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 July 11, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 21, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Vice Chair Verma, with a vote of 4-0; Chair Anderson, Commissioners Cichy, Patterson and Verma voting in favor with Commissioner Rubin being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220010 to create 159 lots for 336 dwelling units on the Subject

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

Property, subject to the following conditions:¹

GENERAL APPROVAL

1. This Preliminary Plan is limited to 159 lots for 336 new dwelling units, including 144 single-family attached and 192 multi-family dwelling units, including a minimum of 12.5% percent moderately priced dwelling units (MPDUs) for residential use.

ADEQUATE PUBLIC FACILITIES AND OUTSIDE AGENCIES

2. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for eight (8) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5). The phasing schedule is as follows:

Phase A – Within 5 years up to a cumulative total of 70 dwellings across Development Area 2 (CRT zone) and Development Area 1 (R-90 zone)

Phase B – Within 6 years up to a cumulative total of 188 dwelling units, with a maximum of 100 dwelling units in Development Area 1 (R-90 zone)

Phase C – Within 8 years all remaining development

PLAN VALIDITY PERIOD

3. The Preliminary Plan will remain valid for eight (8) 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 and pursuant to the below phasing plan must be recorded in the Montgomery County Land Records or a request for an extension filed. The following phasing schedule shall apply:

Phase I – 3 years – at least 10 lots total

Phase II – 5 years – at least 50 lots total

Phase III – 6 years – at least 100 lots total

Phase IV – 8 years – all remaining lots

OUTSIDE AGENCIES

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated

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.

July 7, 2022 and incorporates them as conditions of the Preliminary Plan approval except for Condition 3.c.i listed under Significant Preliminary Plan Review Comments and Conditions. This condition is replaced with Condition 26.b of this approval. The Applicant must comply with each of the other 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 ("MDSHA") in its letter dated June 23, 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.
7. Before the issuance of access permits, the Applicant must satisfy the MDSHA 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 Preliminary Water Quality Plan approval letter dated June 6, 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 MCDPS – Water Resources Section provided that the amendments do not conflict with any other conditions of the Preliminary Plan approval.
9. The Applicant must implement the Montgomery County Department of Permitting Service's requirements for soil preparation, top-soiling, soil stabilization and soil amendments for any graded areas of 1,000 square feet or more that will be vegetated with grass. These requirements must be reflected on the Final Water Quality Plan, subject to MCDPS approval.
10. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 1, 2022, and revised June 8, 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 MCDPS provided that the amendments do not conflict with any other conditions of the Preliminary Plan approval.

11. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA") in its letter dated May 16, 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 DHCA provided that the amendments do not conflict with any other conditions of the Preliminary Plan approval.

FUTURE SITE PLAN APPROVAL REQUIRED

12. Before clearing, grading, or recording a plat for the Subject Property, the Applicant must receive Staff certification of a Planning Board approved site plan. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined through site plan review and approval.
13. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan or Site Plan Amendment.
14. The Applicant must submit a development schedule in table form to match the proposed overall phasing plan set forth in the Preliminary Plan APF approval to include information on proposed dwelling unit count and building permit by location as well as by proposed time of construction.

ENVIRONMENT AND NOISE

15. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120200110, approved as part of this Preliminary Plan:
 - a. Prior to recordation of any plats and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record Category I Conservation Easements over all areas of forest retention, forest planting, and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easements 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.
 - b. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3-inch caliper trees. The total

amount of required mitigation will be determined at time of Final Forest Conservation Plan approval with the Site Plan.

- c. The Applicant must submit and obtain Planning Board approval of a Final Forest Conservation Plan at the time of Site Plan. The Final Forest Conservation Plan must include the following:
 - i. existing conditions information for areas of off-site limits of disturbance, including the proposed MD 355 Bypass connection to Frederick Road/MD 355;
 - ii. an updated forest conservation worksheet to reflect the inclusion of all areas of offsite limits of disturbance, including the proposed MD 355 Bypass connection to Frederick Road/MD 355;
 - iii. an updated tree variance request to account for applicable trees impacted by required frontage improvements, the off-site limits of disturbance, and any impacted trees 1-inch caliper and larger that are located within the Historic District (i.e., trees along Redgrave Road and the Clarksburg Elementary School).
 - d. The Final Forest Conservation Plan must include an Environmental Impact Sheet identifying all impacts to wetlands, streams, and the environmental buffer and demonstrate efforts to avoid and minimize the impacts, including relocating stormwater management facilities outside of the environmental buffers, consistent with the approved MCDPS Water Quality/Stormwater Management Plan. Details of the impacts to the environmental resources associated with the construction of the intersection of the proposed MD 355 Bypass with Clarksburg Road must be included. Mitigation for impacts may be required as part of the future Site Plan approval.
16. Impervious surfaces are limited to no more than fifteen (15) percent of the area under application for development within the Clarksburg East Environmental Overlay Zone, pursuant to Section 59-4.9.5 of the Zoning Ordinance.
 17. The Applicant must submit and obtain Planning Board approval of a Final Stream and Wetland Restoration Plan at the time of Site Plan, and the final plan must be reviewed by the MCDEP, the M-NCPPC Department of Parks and the M-NCPPC Planning Department.
 18. The Applicant must submit and obtain Planning Board approval of a Final Water Quality Plan, including an updated Impervious Surface Plan at the time of Site Plan. The Impervious Surface Plan must demonstrate compliance with the Clarksburg East Environmental Overlay Zone.
 19. Prior to submission of the Site Plan application, the Applicant must submit a Noise Analysis to address the M-NCPPC *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*.

Recommendations based on the Noise Analysis must be incorporated into the Site Plan.

Transportation/Access

Interim 355 Bypass

20. Prior to Certification of the Preliminary Plan, the Applicant must demonstrate that the Applicant and/or County has officially filed for the acquisition of the adjoining property that is necessary to provide the MD 355 Bypass connection to Frederick Road/MD 355.
21. Prior to Site Plan application, the Applicant must demonstrate that the County is proceeding to acquire the land needed for the MD 355 Bypass connection to Frederick Road/MD 355; should that process not be completed within 2 years of this Resolution, the Applicant may seek an amendment of this approval for an alternative connection to Frederick Road/MD 355.
22. If Conditions 20 and 26.a. are not met, the approval will be limited to no more than 100 dwelling units in Development Area 1 of Phase B. The Applicant may be able to proceed with all units in Development Area 2 as conditioned in the CRT-zoned portion of the Property.

Frontage Improvements

23. 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 public right-of-way along the Subject Property frontage for the following roads:
 - i. Thirty-five (35) feet from the existing centerline along Redgrave Place.
 - ii. Forty (40) feet from the existing centerline along Clarksburg Road/MD 121.
 - iii. Sixty-five (65) feet from the existing centerline along Frederick Road/MD 355.
 - b. All land necessary to accommodate one-hundred and thirty feet (130 ft) from the opposite right-of-way line along the Subject Property frontage for master-planned MD 355 Bypass.
24. Prior to the release of the 88th building permit for Phase A or release of the 1st building permit for Phase B, the Applicant must construct the following improvements and satisfy all necessary requirements of MCDPS, MCDOT, and/or MDSHA:

- a. An 11-ft wide sidepath along the south side of Redgrave Place along the frontage of Clarksburg Elementary School in coordination with Montgomery County Public Schools (MCPS).
 - b. Construct a connection of Private Street A to the Gateway Center Drive / Clarksburg Road intersection.
 - c. An 11-ft wide sidepath along the north side of Clarksburg Road along the frontage of the Subject Property to the east of Gateway Center Drive.
 - d. A 6-ft. wide striped bike lane along the north side of Clarksburg Road along the frontage of the Subject Property to the east of Gateway Center Drive.
 - e. An 11-ft wide sidepath along the south side of Clarksburg Road to the west of Gateway Center Drive to connect to the sidepath on Stringtown Road.
25. Prior to the release of the 1st building permit for Phase B, the Applicant must construct the following improvements and satisfy all necessary requirements of MCDPS and/or MDSHA:
- a. Construct the full approved interim cross section of the MD 355 Bypass across the Subject Property.
 - b. An 11-ft wide sidepath along the development side of the interim MD 355 Bypass.
 - c. A 6-ft wide sidewalk along the frontage of the Subject Property with Frederick Road.
26. Prior to the release of the 1st building permit for Phase C, the Applicant must provide the following and satisfy all necessary requirements of MCDOT, MCDPS and/or MDSHA:
- a. Construct the extension of the Interim MD 355 Bypass across the off-site parcel to connect from the Interim bypass to Frederick Road/MD 355.
 - b. The provision of a preliminary ("30 percent") design for a roundabout at the "L" bend of the bypass adjacent to Development Area 1. If requested by MCDOT, this design shall be improved until satisfaction of a final design as reviewed and approved by MCDOT and Planning staff.
 - c. Construct an 11-ft wide sidepath along the north side on the extension of the MD 355 Bypass on the off-site parcel to connect to Frederick Road.
 - d. Construct a sidewalk along the frontage with Frederick Road along the off-site parcel and construct a pedestrian crossing of the intersection between Frederick Road and the proposed MD 355 Bypass.
 - e. The Applicant shall submit information as requested by MCDOT and/or MD SHA to determine the need for a traffic signal at the intersection between the MD 355 Bypass and Frederick Road/MD 355. A signal, if found to be necessary by staff of either MCDOT or SHA, must be constructed by the Applicant.

New Streets

27. The Applicant must construct all private streets and alleys, including any storm drainage facilities, private utility systems and other necessary improvements as shown on either the Preliminary Plan or the subsequent Site Plan within the private street parcels.

Private Roads

28. The Applicant must provide Private Roads A, B, C, D, and Private Alleys 1, 2, 3, 4, 5, 6, 7, and 8, including any sidewalks, bikeways, storm drainage facilities, street trees, streetlights, 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) If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel.
- b) The Private Roads, including the Alleys, must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions as required by the Montgomery County Code with regard to private roads set forth at § 50-4.3.E et seq. The Covenant includes, but is not limited to the following requirements/conditions:
 - i) The Applicant, at its expense, shall design, construct, and maintain the Private Road.
 - ii) The Applicant, at its sole cost and expense, shall properly and continually maintain (including ordinary and capital maintenance and removal of snow, ice, litter, and other obstructions and hazards as soon as conditions reasonably allow), repair, and replace any portion of the Private Road and all improvements located within the Private Road, in good condition and repair for safe use and operation of the Private Road. The Applicant must maintain a commercially reasonable budget (operating and capital, as applicable) to address both short-term and long-term maintenance, and reserves for capital repairs. The Applicant must provide certification of the reserves to the Planning Board or its Staff every two (2) years (or every five (5) years in the event there are no below-ground parking structures in the Private Road). The reserves must be adequate to cover the costs of needed repairs.
 - iii) The Applicant must post and retain signage to notify the public that the Private Road is not publicly maintained and to provide contact

information to handle complaints, concerns, or questions regarding the Private Road.

- c) Before issuance of the first above ground building permit excluding retaining walls, 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.

29. The Applicant must provide a natural surface trail along the northern Property line that is designed to connect to the adjacent Ashford Woods (Preliminary Plan No. 120200110) natural surface trail network.

30. All trails associated with the development are 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 public access to the trail system 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 Staff's review and approval.

SCHOOLS

31. Prior to issuance of each building permit for a residential dwelling unit, the Applicant must obtain an assessment from Montgomery County Department of Permitting Services (MCDPS) for Utilization Premium Payments (UPPs) consistent with the 2020-2024 Growth and Infrastructure Policy, as follows:

- a) 1.00 of a Tier 2 high school UPP per unit.

Record Plats

32. There shall be no clearing or grading of the site prior to recordation of plat(s).

33. The Record Plat must show all private streets and alleys within their own parcel(s).

Easements

34. The record plat must show all necessary easements.
35. The Record Plat must reflect an ingress/egress easement over all private streets and alleys, designated for the benefit of all properties with access to the alleys. All private streets and alleys shall be bound to the standard covenant recorded in Book 54062 at Page 338 for private streets and alleys
36. The Record Plat must ensure the recording of Public Utility Easements along all street segments or locations as identified on the Certified Preliminary Plan.

Notes and Labels

37. The record plat must reflect all areas under common ownership. The record plat must reflect all areas to be conveyed to a Homeowners Association ("HOA") and specifically identify stormwater management parcels.
38. Prior to recordation of any plat, the Site Plan must be certified by M-NCPPC Staff.
39. Before recordation of a plat for the Subject Property, the Applicant must grant to M-NCPPC a rural open space easement over no less than 80 percent (73.90 acres) of the net tract area of the Subject Property as shown on the Preliminary Plan. The Applicant must record the easement, in a form approved by the M-NCPPC Office of General Counsel, among the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).

MODERATELY PRICED DWELLING UNITS (MPDU'S)

40. The Application must provide a minimum of 12.5 percent MPDUs or MCDHCA-approved equivalent consistent with the requirements of Chapter 25A and the applicable Master Plan in both the R-90 and CRT Zones.
41. The final number and location of MPDUS as required by Conditions #1 and #40 above will be determined at the time of site plan approval.

Certified Preliminary Plan

42. The Certified Preliminary Plan must contain the following notes:
 - a. *Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan*

are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.

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

- a. Include resolution for this Preliminary Plan, and all applicable Agency approval letters on the approval sheets.
- b. Include a Phasing Exhibit illustrating the construction phasing for the MD 355 Bypass with associated units and improvements in each phase, in the certified set.
- c. Revise the Data Table provided on (Sheet 1a) to calculate MPDU's (in square feet) based on the area of each zone in compliance with Section 4.4.2. of the Montgomery County Zoning Ordinance.
- d. Illustrate a connection of Private Street A to intersect with Gateway Center Drive.
- e. Illustrate a 6-ft wide sidewalk along the west side of off-site MD 355 Bypass segment, connecting from the onsite sidewalk through the off-site parcel and to MD-355.
- f. Illustrate a complete connection of the sidepath on Clarksburg Road to Stringtown Road.
- g. Widen the crossing ramps across Clarksburg Road at the Gateway Center Drive intersection to a bikeable 11 ft in width.
- h. Illustrate one additional trailhead along Street A to connect to the trail network between Lots 3 and 4.
- i. Provide an updated Impervious Surface Plan, signed by a Professional Engineer, that includes all required improvements and demonstrates compliance with the 15 percent impervious surface limit for the Clarksburg East Environmental Overlay Zone.

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:

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

The layout of the subdivision, including size, width, shape, and orientation of the proposed lots is appropriate for the location of the subdivision considering the recommendations in the Master Plan that emphasize environmental and watershed protection along with preservation of open space. The lots comply with the dimensional requirements for the R-90 zone under the Optional Method per Section 59.4.4.8.C, the CRT-2.0, C-2.0, R-2.0, H-120 Zone under the Standard Method per Section 59.4.5.3, and the R-200 Zone under Standard Method per Section 59.4.4.7 of the Zoning Ordinance. The Application also complies with the requirements and the development standards of the Clarksburg East Environmental ("CEE") Overlay Zone as specified in the Zoning Ordinance.

Block Design

The block design depicted on the Preliminary Plan is appropriate for the proposed residential development. The length, width, and shape of all residential blocks are compatible with a walkable gridded street pattern and land use goals for the Property. New residential blocks are located along the proposed MD 355 Bypass right-of-way in the northwestern portion of the Property with a much smaller and more linear block design in the southeast portion of the Property. The blocks are of an appropriate length and width to accommodate pedestrian and vehicular circulation, and open space. The blocks are also designed to minimize impacts to the environmental features on the Property by locating them away from environmental buffers and forested areas.

Lot Design

The lot size, width, shape, and orientation are generally appropriate for the location of the subdivision and for the proposed residential use. All lots will either front along the proposed MD 355 Bypass, Clarksburg Road/MD 121, or along the newly created private roads known as Street A, Street B, Street C, and Street D. The dimensions of the lots will be able to accommodate the residential dwelling units and other infrastructure necessary to serve the lots.

Impervious Area Limits of the Clarksburg East Environmental Overlay Zone

The Application is subject to Chapter 59, Section 4.9.5, the Clarksburg East Environmental Overlay Zone. The requirements of the Overlay Zone include limits on impervious surfaces for the total area under application for development. Specifically, Section 4.9.5.D.1 (Clarksburg East Environmental Overlay Zone) states "...the maximum total impervious surface area for any development after August 4, 2014 is 15% of the total area under application for development". The Application includes less than 15 percent impervious surfaces which is below the permitted amount and therefore, conforms to the requirements of the Overlay Zone.

Adequate Open Spaces

The Preliminary Plan provides for adequate open areas. The Application includes 80.32 percent rural open space (73.9 acres), exceeding the 80 percent Rural Open Space requirement outlined in the Clarksburg East Environmental Overlay Zone. Additionally, the Application will provide two percent open space for recreation and amenities for the residential development within the buildable envelope. The Application includes a centrally located recreation area that features a playground, natural surface trails, and passive green area. The Preliminary Plan provides adequate open areas for amenities, recreation, and stormwater management. Open spaces will be evaluated in detail at the time of Site Plan(s).

Roads

Interim Clarksburg MD 355 Bypass

The Preliminary Plan provides adequate right-of-way dedication to support the full master planned facilities of the MD 355 Bypass and the Applicant will construct a road connection that follows the Bypass alignment through the Subject Property that runs between Clarksburg Road and Frederick Road, meets public road standards, and satisfies the requirements of the 2018 *Bicycle Master Plan*. The Applicant will construct an interim road to serve as part of the larger Clarksburg Bypass to be constructed through the Subject Property from Clarksburg Road, through the Subject Property, and extend through an off-site property to Frederick Road (the "Interim 355 Bypass"). This Interim 355 Bypass will be constructed in two phases. The Applicant is required to construct both sections as part of the Application.

The Interim 355 Bypass is not constructed to the full final vision of the MD 355 Bypass. The Interim 355 Bypass will not provide an uninterrupted, fluid transition from south to north; instead, an intersection will be constructed at Clarksburg Road which will require vehicles to stop and turn into and out of the road. Vehicles will then travel along the existing Clarksburg Road and through the intersection between Clarksburg Road and Gateway Center Drive. This interim approach is acceptable given the uncertainty of the final alignment of the Clarksburg Bypass to the south, which may ultimately follow either Observation Drive or Gateway Center Drive. Without a complete connection to the south, and without the resulting vehicular demand, there is no need for a higher speed capacity alignment at present. Additionally, the eventual construction of the final alignment will require off-site land acquisition from both private and public properties that are beyond the Applicant's control, as well as incurring significant additional environmental impacts to grading, forest cover, streams, and impervious surface cover that are not justified without a useful connection to the south.

The Interim 355 Bypass will not include a separate dedicated transitway, a feature recommended in the Master Plan as well as the Master Plan of Highways and Transitways. At present, there is no planned transit route that would use such a facility and no route that would operate to the north of Stringtown Road. Instead, the recent *2022 Corridor Forward Plan* envisions the closest BRT service terminating at the Clarksburg Premium Outlets, with service running on Stringtown Road, proximately 1,000 ft. south of the Subject Property. No service is currently planned to the north. Additionally, the transitway facility will not be pursued along the interim road as it would more than double the size of the roadbed and would incur additional significant environmental impacts to grading, forest cover, streams, wetlands, and impervious surface cover for no clear public benefit. Deferring construction will also eliminate the recurring public expense of maintaining such a facility until it is planned and clearly needed. Nevertheless, in support of the full master plan vision, the 130 ft. of ROW dedication will accommodate all master planned facilities.

A master-planned sidepath will be constructed on the north side (development side) of the Interim 355 Bypass, though the interim condition will not include a sidewalk on the opposite side due to the lack of access to any existing or proposed property as well as the significant environmental costs of additional grading and impervious surface.

The second phase of the Interim 355 Bypass will be constructed following the acquisition of an adjacent property by MCDOT. The property lies between the Subject Property and Frederick Road, immediately to the north of the proposed Fire Station; ownership of the property is uncertain from tax and land records and appears to be vacant. Following acquisition by MCDOT, the Applicant will construct the Interim 355 Bypass section. Due to the restrictions of remaining property lines however, this property alone is not wide enough to accommodate all master planned road features; should a dedicated transitway be pursued sometime in the future, additional property acquisition will be required.

Internal Streets

The Application will establish two separate development areas, one larger to the north (Development Area 1), and a smaller area to the south adjacent to Clarksburg Road (Development Area 2). All Internal streets in these Development Areas will be private streets governed by a standard private road covenant.

Internal streets in these Development Areas will create a small-scale street grid that enables bike and pedestrian access while minimizing impervious surfaces. A new intersection will be constructed at Clarksburg Road/MD 121 to serve the Interim 355 Bypass which will provide access to Development Area 1. Two access points along the Interim 355 Bypass will be created to serve Development Area 1.

As conditioned, the smaller development area (Development Area 2) to the south will be served by two intersections: the first, an access point along Clarksburg Road and the second at the intersection between Clarksburg Road and Gateway Center Drive. As development proceeds, the Interim 355 Bypass will be extended across offsite property to be acquired by Montgomery County to connect to Frederick Road/MD 355. All proposed streets internal to the Subject Property will be private streets, while the Interim 355 Bypass will remain public.

Private Roads

All internal streets will be private. Modifications have been made to standard MCDOT street cross sections to reduce centerline radius, overall width, and impervious surface in light of the context of the Ten Mile Creek Special Protection Area.

The streets as modified limit the overall cross section and impervious surface as recommended in the 2014 *Ten Mile Creek Area Limited Amendment*. A notable departure from public road standards is the removal of sidewalk from one side of streets in select areas of the development area as discussed previously along streets that run along the perimeter of the two development areas. As stated in their respective agency letters, neither MCDOT nor DPS will accept public roads within the context of a townhouse community without sidewalks on both sides of the street. However, this is in conflict with the intent of the Master Plan guidance in reducing overall street cross sections, with the Master Plan's explicit endorsement of removing sidewalks in areas deemed not essential.

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

The private road network is contained entirely within the Subject Property, accessing only the two development clusters; they do not provide through connectivity to serve the general public. The road network as proposed is not needed to maintain area-wide circulation and does not provide a continuous corridor to serve the public. It is not needed to be part of the network modeled for area capacity. All roads will be considered secondary streets, tertiary streets, or alleys, all of which are eligible to be permitted as private streets. The Planning Board finds that this meets the justification requirements for the use of private roads as detailed in 50.4.3.E.4.a. The Planning Board has reviewed the pedestrian circulation and, as conditioned, finds it to be adequate.

Required Transportation Findings

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

The Applicant requested a finding of the minimum centerline radius requirement for Private Streets A and D, specifically for the 3 curves on Private Street A, serving 88 dwellings, and the curve immediately adjacent to the intersection between Private Street D and the Interim 355 Bypass, serving approximately 120 units. Both streets require a centerline radius no less than 150 feet to meet the typical secondary street standard. The Applicant instead requested a reduced radius of 100 feet, the minimum assigned to a tertiary street. The Planning Board grants this request as the tighter radius supports a correspondingly tighter development envelope, thereby reducing grading, deforestation, impervious surface, and other environmental impacts as recommended in the Master Plan. The roads will continue to operate safely and appropriately as the roads will carry volumes at these corners equivalent to those of a typical tertiary street for which a 100-foot radius is acceptable. Additionally, these corners will reduce vehicular speeds in this entirely residential neighborhood, enhancing safety for bicyclists and pedestrians.

2. Open Section Road Requirement, Ch. 49.33.1

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

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

The Planning Board approves the use of curbs and gutters instead of an open section road design.

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

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

Land Use, Zoning and Property Recommendations

The development is consistent with the land use, zoning, and property recommendations outlined in the Master Plan. The Master Plan recognizes that physical constraints including topography, stream valleys, forest, and potential future roadway and transit networks suggest that the Miles Coppola development should function independently, but in a way that supports the Clarksburg Town Center. Development Area 1 (R-90 zone), situated along MD 355 is recommended for residential uses that support retail in Clarksburg's Town Center. Development Area 2 (CRT-zone), situated along MD 121 and close to the Town Center is recommended for zoning that could result in residential or commercial uses, or a mix of uses. This Application includes entirely residential uses that will support the retail, restaurants, and other businesses in Clarksburg. The Master Plan also provides more specific recommendations listed below (Master Plan, p. 37-38).

- *Including the Miles-Coppola properties in the proposed Clarksburg East Environmental Overlay zone with a 15 percent imperviousness limit and an 80 percent open space requirement.*
The proposed development results in less than 15 percent imperviousness, meeting the impervious surface limit recommended above. The development also includes 80.32 percent rural open space which is above the required amount.
- *Directing development to two potential development areas. The southern area, located near Clarksburg Road, benefits from access to Clarksburg Road and the Town Center and, therefore, is appropriate for more intense development. The Plan Amendment recommends CRT zoning (CRT 2.0, C 2.0, R 2.0, H 120) for this area, with a residential zone (R 90) on the remainder of the Miles-Coppola property, to concentrate density and imperviousness on the southern developable area near major roads and within proximity to the Historic District and Town Center.*

The Application includes two development areas (Development Area 1 within the R-90 zone and Development Area 2 within the CRT zone); both of these areas will consist of compactly designed residential uses that meet the recommended impervious surface limits and will support the businesses in the Historic District and Town Center.

- *Allowing housing or commercial uses on the southern developable area that complement, but do not compete with, the core Town Center. High density residential housing, lodging, or office development would support the Town Center.*

The southern developable area (Development Area 2) will provide housing that supports the Town Center, and not compete with it. High density residential is being provided with 63 multi-family triplex units combined with 25 townhouse units.

- *Orienting residential development on the northern developable area toward the MD 355 bypass to take advantage of proximity to future transit and to enable residents to reach businesses or activities in the Town Center using an integrated network of roads, trails, and sidewalks.*

The northern developable area (Development Area 1) is oriented toward the MD 355 Bypass that extends from Clarksburg Road/MD 121 through the Property and out to Frederick Road/MD 355. The Application also includes a network of sidewalks, bikeways, and natural surface trails that provide a variety of means for residents to access businesses and activities in the Town Center.

- *Concentrating and integrating development to allow more of the existing forest and natural terrain to remain undisturbed, reduce imperviousness, and contribute to improved water quality.*

The development is designed as a compact residential community that is adjacent to major existing and proposed roads, primarily situated on land previously cleared for agriculture use, which maximizes the preservation of existing forest and the natural environment, including 80.32 percent rural open space, and reduces imperviousness, which in turn protects water quality.

- *Permitting varied unit types via the overlay zone, including single-family attached, single-family detached, and multi-family, with flexibility regarding building heights.*

The development is clustered into two separate development areas that include two primary types of housing: multi-family tri-plex residential, which are permitted as multi-family units in the Zoning Ordinance, and single-family attached (townhouse) units. In Development Area 1, front-loaded townhouse units make up the entirety of the periphery of the development area with rear-loaded townhouses and rear-loaded multi-family tri-plex units located in the center of the development area. Development Area 2 has the same mix of

building types with a mix of front-loaded and rear-loaded units served by private alleys.

- *Permitting a maximum density of three units per acre (approximately a 279 unit limit), or 3.66 units per acre with an MPDU density bonus on the portion of the property to be zoned R-90.*

As modified at the Public Hearing by the Planning Board, the Application includes 12.5 percent MPDUs for the overall development, which is the minimum required amount. The final number and location of MPDUs will be determined at the time of site plan approval. The Applicant provides 2.89 dwelling units per acre, which is below the maximum density allowed.

- *Recognizing that maximum development yields may only be realized with unit types that achieve higher densities within the smaller developable areas created by the imperviousness limit and open space requirement.*

The development includes tri-plex units and townhouse units which allow for higher densities with smaller developable areas, conducive to meeting the Master Plan recommendations and Overlay Zone requirements related to imperviousness and open space.

Environment

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

Development on the Subject Property will be clustered away from the stream valleys, protecting over 55 acres of existing forest resources, and the Applicant is planting approximately four acres of new forest in areas of stream valley buffer that are currently unforested. Where forest cannot be planted within the buffers due to existing and proposed utility and stormwater management easements, these areas will be planted as meadow habitat with native species favored by pollinators.

The Application includes impacts to the environmental buffer and associated resources for a) the construction of the proposed MD 355 Bypass where it intersects with Clarksburg Road/MD 121, b) right-of-way improvements for

Frederick Road/MD 355, and c) impacts associated with natural surface trails, a pedestrian bridge that will connect the two development areas, storm drain outfalls and some grading/tie outs. These impacts are represented on a Stream Valley Buffer Impact Exhibit. As conditioned, the Stream Valley Buffer Impact Exhibit will be updated at time of Site Plan application and included in the Final Forest Conservation Plan set, to represent the final impacts, including the relocation of a stormwater management facility outside of the environmental buffer. The Application includes a stormwater management facility in Development Area 2 that is located within the environmental buffer; however, it was recently redesigned/relocated outside of the buffer, and conceptually approved by MCDPS.

The conditions of Pre-Preliminary Plan 720210010, MCPB Resolution 21-051, approved on July 20, 2021, encourage the Applicant to locate the MD 355 Bypass intersection segment with Clarksburg Road as far uphill to the north as possible to avoid and minimize environmental impacts to the stream valley. Additionally, Condition #7 requires the Applicant to coordinate with Staff to minimize environmental impacts associated with frontage improvements along MD 355, regardless of the alignment of the MD 355 Bypass. These conditions are addressed below.

- MD 355 Bypass intersection with Clarksburg Road/MD 121 – this road connection results in impacts to the environmental buffer, stream, and 100-year floodplain due to the extension of the culvert under Clarksburg Road to accommodate the MD 355 Bypass, including a headwall/retaining wall, associated grading, and the installation of storm drain, and water and sewer utilities. There is an existing stream and associated wetland that flows under Clarksburg Road. The Planning Board finds that there are no available alternatives to make this road connection due to the limited frontage on Clarksburg Road, and locating the intersection further north would put the connection on an off-site, adjacent, already developed property.
- MD 355 Bypass intersection with Frederick Road/MD 355 – required improvements within the right-of-way result in impacts to the environmental buffer, including the wetland buffer and associated stream for the construction of shoulder widening, sidewalk installation, extension of the existing culvert to accommodate these improvements, and associated grading.
- Natural surface trails, a pedestrian bridge that will connect the two development areas, storm drain outfalls and some grading/tie outs will result in impacts to the environmental buffer, including the wetland buffer. The pedestrian bridge will span the stream to minimize impacts for this crossing. There are expected encroachments proposed within the environmental buffers for storm drain outfalls necessary to allow for safe conveyance of stormwater, and there may be some grading/grade tie-outs that remain within the buffer,

but these impacts will be reviewed in more detail at time of Site Plan to ensure they are minimized as much as possible.

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

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

- *Limit imperviousness levels to 15 percent for new development on properties that are recommended for the proposed Clarksburg East Environmental Overlay Zone.*
As discussed above, the Application meets the required impervious surface limit of 15 percent.
- *Forest Conservation Plans for properties in the Ten Mile Creek Watershed should protect the forest on the Miles/Coppola properties, which is bounded by the two northernmost environmental buffer areas on the north and south, I-270 on the west, and the existing agricultural fields on the east.*
The development does not propose to disturb the forest in this area as demonstrated on the Forest Conservation Plan; and this forest will be protected in a Category I Conservation Easement.
- *Work with the Maryland State Highway Administration to provide stormwater retrofits for any expansion or modification of I-270.*
Expansion or modification of I-270 is not anticipated as part of the Application and therefore this recommendation is not applicable.

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

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

- *Environmental buffers must be consistent with all regulations and guidelines. In addition, in all areas in Ten Mile Creek other than the Historic District, on both sides of perennial and intermittent streams, and adjacent to springs, and seeps, buffers must be a minimum of 200 feet, and must be expanded to include: All erodible soils (listed in the Planning Board's Environmental Guidelines for Development, as amended); Wetlands that extend beyond the buffer must have a minimum of 50-foot buffer; All ephemeral streams, not including roadside ditches, plus a 50-foot buffer; All slopes 15 percent or greater that begin within the buffer described above.*
Planning Staff approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 420210650 on April 13, 2021. The NRI/FSD

identified these required features and conforms to these recommendations. The approved environmental buffers are identified on the Preliminary Forest Conservation Plan submitted as part of this Application.

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

The limits of the Clarksburg Special Protection Area were amended and the Ten Mile Creek Special Protection Area was created in response to this recommendation. The Subject Property is within the Ten Mile Creek Special Protection Area.

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

The Clarksburg East and Clarksburg West Environmental Overlay Zones were created in response to this recommendation. The Overlay Zones incorporate limits on imperviousness and open space requirements. The Subject Property is within the Clarksburg East Environmental Overlay Zone that limits imperviousness to 15 percent and requires 80 percent rural open space to protect sensitive resources.

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

The Preliminary Forest Conservation Plan submitted with this Application demonstrates conformance with the Forest Conservation Law and Regulations, which is further discussed below, protects interior forest, and protects the forest bound by the two northernmost environmental buffer areas on the north and south, I-270 on the west, and the existing agricultural fields on the east. The required forest planting will be met on-site. The Application protects approximately 60 acres of existing and planted forest through conservation easements.

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

The Subject Property is not located on rural or RDT-zoned land and the development and existing forest to be retained leave little area available for additional forest plantings beyond the planting required in the environmental buffers. The approximately 60 acres of forest that will be protected via this Application will contribute towards the watershed goal of 65 percent forest cover.

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

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

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

within the limits of disturbance with organic matter to a greater depth than currently required (this measure would be determined by the Department of Permitting Services as part of development plan and approvals. Environmental Site Design (ESD) – As a first step, apply appropriate ESD site planning techniques within proposed development areas to maximize environmental benefits; Site planning and design must be guided by and integrated with the selection and appropriate location of ESD practices to achieve the greatest watershed benefits based on an evaluation of specific site and subwatershed considerations; To the extent feasible, ESD practices should minimize the concentration of flows through sheet flow and dispersion and must ensure any such conveyance is done in a non-erosive manner. Require restoration of streams and wetlands adversely affected by existing uses after all development is completed in the drainage area so as to allow the hydrology to adjust to the new landscape.

In general, the Application addresses the Master Plan recommendations listed above. The majority of these items related to sediment control and stormwater management are reviewed by MCDPS as part of the Water Quality Plan. MCDPS has approved their portion of the Preliminary Water Quality Plan as part of this Application. They will be reviewing the Final Water Quality Plan with the future site plan application, at which time additional infiltration testing will be required. If infiltration is feasible, it will be used for ESD treatment, and this may alter the current stormwater management design and layout. If infiltration is not feasible, two additional feet of stone storage will be required below the proposed micro bioretention facilities (non-planter box) in areas of minimal cut and fill to promote groundwater recharge. MCDPS will be reviewing the plans for the disturbed areas and storm drain conveyance/ESD non-erosive outfall compliance during MCDPS' detailed plan review stage for the sediment control and stormwater management plans. Staff from MCDPS Water Resources has confirmed that this Application is effectively maintaining existing drainage areas, with only relatively small areas being directed away from their existing drainage course. This is a standard requirement of all SPA water quality plans. Although the State of Maryland no longer requires limiting the grading units to a 20-acre maximum, MCDPS continues to require sediment control plans adhere to these restrictions. Therefore, the Application will be required to be phased so that only 20 acres (a grading unit) at a time will be actively disturbed. When this grading unit is 50 percent complete and stabilized, the next grading unit may be opened. This will limit active grading to no more than 30 acres at one time.

The Master Plan references requirements for de-compaction and soil amendments. Although the Master Plan language is vague on specifics, MCDPS recommends that in order to comply with the intent of the Master Plan recommendation, the Planning Board require that the Applicant follow the Maryland Department of the Environment (MDE) requirements for soil

preparation, top-soiling and soil amendments, but provide soil loosing and fertilizing to 6-8 inches and a minimum of an eight-inch layer of topsoil for any graded areas of 1,000 square feet or more that will be vegetated with grass. Therefore, as conditioned, these requirements exceed the MDE standards which requires 3-5 inches of soil loosing and 5-8 inches of topsoil for graded area greater than five acres. This increased soil amendment strategy will serve to maintain the infiltration capabilities of the soil, promote more vibrant plant growth, and reduce runoff.

The Application minimizes direct impacts to natural resources associated with new infrastructure, such as the MD 355 Bypass by aligning its intersection with Frederick Road further south, on an offsite, undeveloped property located adjacent to the Clarksburg Fire Station, thereby avoiding impacts to the onsite stream and wetlands along the Property's frontage. Where the MD 355 Bypass intersects with Clarksburg Road/MD 121, there is an existing stream and associated wetland that flows under MD 121. There are no available alternatives to make this road connection since the stream and wetlands are located just inside the Property boundary, the Property contains limited frontage along Clarksburg Road, and locating the intersection further north, would put the connection on an off-site, adjacent, already developed property. The details of this road crossing will be reviewed in greater detail with the site plan application to minimize the impacts as much as possible.

The Application includes a Preliminary Stream and Wetland Restoration Plan that identifies areas that have been adversely affected by the past uses that occurred on the Property. As conditioned, a Final Stream and Wetland Restoration Plan will be reviewed by Staff from the M-NCPPC Planning Department and Department of Parks, and MCDEP as part of the Site Plan application.

The development has been designed to cluster development to minimize forest clearing, particularly the high priority forest, protect the environmental features, and minimize impervious area. The proposed design also meets the recommendations listed above to protect and preserve the natural resources throughout the Ten Mile Creek by 1) providing a mix of townhouse and multi-family units for a more compact development compared to single-family detached development, 2) clustering the development away from existing environmental resources 3) designing reduced width streets where possible; and, 4) having sidewalk on only one side of the street in areas where pedestrian circulation is not impacted.

Parks and Trails (Master Plan, p. 49)

The Master Plan also provides several recommendations related to Parks and Trails.

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

The Application includes a natural surface trail that traverses through the Property, and provides connections between the two Development Areas, as well as to the internal sidewalks, MD 355, and MD 121. These trails will also connect to the trail network that was recently approved as part of the Ashford Woods development (Preliminary Plan No. 120200110) on the adjacent Property to the north, which collectively link to Little Bennett Regional Park and Black Hill Regional Park beyond this Property, providing additional access to the greater trail network envisioned by the Master Plans.

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

This recommendation is not applicable to the Subject Property.

Noise Guidelines

The Environmental Section of the 1993 General Plan Refinement for Montgomery County contains multiple objectives directing Staff 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. As conditioned, the Applicant must submit a noise analysis as part of the future site plan application for this development. Any required mitigation will be incorporated as part of the site plan.

Transportation (Master Plan, p. 24-30)

The previously approved Pre-Preliminary Plan #720210010 contemplated two options for the potential alignment of the Clarksburg MD 355 Bypass. Condition 1 of the Pre-Preliminary Plan Resolution recommends Option 2 but notes that Option 1 is acceptable if the Applicant is able to "ensure construction on the intervening properties to the north and immediately adjacent to the Clarksburg fire station". The Resolution also indicates that the Preliminary Plan include a detailed concept for the MD 355 Bypass, including an assessment of environmental impacts. This Application pursues the alignment highlighted as Option 1 in the Pre-Preliminary Plan. This alignment closely mirrors the Master Plan guidance to locate the intersection of the MD 355 Bypass with Frederick Road (MD 355) at a point approximately 0.3 miles to the north of the intersection with Clarksburg Road. The proposed MD 355 Bypass follows a path running from the existing intersection of Clarksburg Road and Stringtown Road in the south, along Clarksburg Road, through the upper portion of the Miles Coppola Property, and intersects MD 355 through an off-site property immediately to the north of the

under-construction Clarksburg Fire Station. This alignment will limit both impacts to streams and wetlands as well as the historic district and is in lieu of an earlier alignment from the earlier 1994 Plan to connect to Snowden Farm Parkway to the north.

The Application conforms to the 2018 *Bicycle Master Plan* by providing the following improvements:

- Frederick Road / MD 355

A sidepath is recommended on the east side of Frederick Rd., which is the opposite side from the frontage of the Subject Property. This sidepath will be constructed as part of the MD 355 Clarksburg Shared Use Path CIP project. The Applicant will construct a 6-ft. wide sidewalk along the Property frontage on Frederick Rd.

- Interim Clarksburg Bypass

A sidepath is recommended along the length of the Interim 355 Bypass from Clarksburg Road to Frederick Road. The Applicant will construct an 11-ft wide sidepath along the north-western side of the Interim 355 Bypass, the same side as the proposed residential units. This will extend across the off-site extension of the Interim 355 Bypass (Phase B) to be constructed at a later phase.

A sidewalk will not be constructed along the east side of the Interim 355 Bypass. This portion of sidewalk was determined to be unnecessary as it does not provide access to any existing or planned structure. Since there is the potential in the future for the MD 355 Bypass to be reconstructed and potentially realigned, the immediate environmental concerns over grading, additional forest loss, and addition of impervious surface outweigh the benefits of such a facility.

- Clarksburg Road / MD 121

A sidepath is recommended on the east side of the road and striped bike lanes on the west side. The Applicant will construct an 11-ft. wide sidepath on the west side of Clarksburg Rd. This will be constructed in lieu of the east side due to the severe grade on the east side. Additionally, the sidepath relocation will better connect to the proposed development which will remain on the west side and run continuously from along that side from Gateway Center Drive up to MD 355. As conditioned, south of Gateway Center Drive, the sidepath will cross to the east side, down to the terminating cul-de-sac of the remainder of the Clarksburg Road spur and connect to the new roadbed of MD-121. Additionally, striped bike lanes will be constructed along the west side Property frontage of Clarksburg Rd.

- Redgrave Place

An 11-ft. wide sidepath will be constructed on the south side of Redgrave Place. This is in-lieu of sidewalk along the frontage of the Subject Property on the north side of the road. This was found to be more appropriate as the south side fronts Clarksburg Elementary School, providing direct connectivity. No development is proposed along the Application frontage. An off-site connection to Frederick Road could not be pursued due to lack of right-of-way east of the school and property boundaries extend to the pavement edge in this location, precluding the ability to construct additional infrastructure.

- Internal to Site

Internal pedestrian circulation for the development consists of a sidewalk network along all streets. Sidewalks are provided on both sides of streets except as noted along the outer perimeter street of Development Areas 1 and 2. Due to concerns over the addition of impervious surface, the Master Plan and the Zoning Ordinance recommend limiting sidewalks where possible, as well as other recommendations to limit impervious surface. As part of this Application, on sections of roadway in areas with perceived infrequent pedestrian movement, in particular areas adjacent to rural open space, sidewalks are limited to one side of the street along sections of private streets A, B, and D. Where applicable, on streets where the sidewalk is located only on one side of the street, the sidewalk is wider to promote safer circulation. The Application will also provide a network of natural surface trails throughout the rural open space and preserved natural spaces that will link the two development areas together, connect to the trail network that was recently approved as part of the Ashford Woods development (Preliminary Plan No. 120200110) on the adjacent Property to the north, and connect to Clarksburg Road/MD 121 as well as the MD 355 Bypass.

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

The Preliminary Plan satisfies the Adequate Public Facilities review as explained below.

Transportation

Transportation circulation throughout the Subject Property will be adequate to support and service the proposed development. The Subject Property has frontage on three public roads – Frederick Road, Clarksburg Road, and Redgrave Place. Primary access to Development Area 1 will come from two new access points on the proposed Interim 355 Bypass. Development Area 2 will have access at two points along Clarksburg Road. No new development will be served on Redgrave Place.

- Signal Improvement

As conditioned, additional review by MCDOT and/or SHA may require a traffic signal at the northernmost intersection of the proposed MD 355 Bypass at Frederick Rd. This is primarily based on the adjacency of the new Clarksburg Firehouse which itself requires signal control. While the intersection was analyzed for a signal warrant, which under study was not met, there are significant safety concerns beyond the proximity to the fire station that may require the installation of a signal. These safety concerns include: the high volumes of traffic using Frederick Road, particularly at peak hours, the uncertainty of future traffic volumes on the MD 355 Bypass, the location within a bike and pedestrian priority area, and potential sight distance issues.

▪ Local Area Transportation Review ("LATR")

The Application for 336 new dwellings (144 new townhouses and 192 new low-rise multi-family units) is predicted to generate 207 and 239 net new person trips during the AM and PM peak-hours respectively as shown in Table 5 below. As the Application generates more than 50 peak-hour person trips, a full traffic study was required to satisfy the LATR guidelines. This Preliminary Plan application is a continuation of the review initiated under the prior Pre-Preliminary Plan, which was submitted prior to January 1, 2021, the date on which the 2020-2024 Growth and Infrastructure Policy (GIP) took effect, as specified under Policy AP2 of the GIP concerning review through the transition phase between growth policies. For transportation, this Application was instead reviewed under the 2016-2020 Subdivision Staging Policy and 2017 LATR Guidelines, as allowed by the AP2 policy. The remaining components of the APF finding are reviewed under the 2020-2024 Growth and Infrastructure Policy.

Trip Generation*

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
144 Townhomes / 192 Multifamily Units (ITE 220)	336 d.u.	34	115	150	109	64	173
Adjusted Net New Person Trips	--	47	160	207	150	89	239

*Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2017 LATR guidelines. Figures are rounded to nearest whole number. Source: The Traffic Group, Traffic Impact Analysis Dated July 14, 2021.

The Study analyzed four existing intersections in two policy areas as shown in Table 6 below. The Clarksburg Town Center Policy Area is a designated

Orange Policy Area, for which the HCM methodology is used. The Clarksburg policy area is a Yellow Policy Area, where CLV is the primary methodology. No intersection exceeds either the CLV or HCM congestion threshold under the future scenario, though as shown in the "Intersection Delay" table below, the MD 355 & Clarksburg Rd intersection currently exceeds the HCM delay threshold. As a note, the background and future conditions assume the completion of the MD 355 & Clarksburg Rd intersection CIP improvements which will reduce delays below the policy area congestion standard in all cases.

Intersection Delay

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
Clarksburg Town Center Policy Area (HCM 63 Seconds)						
1. Clarksburg Rd & Site Access	n/a	n/a	n/a	n/a	2.5	2.1
2. MD 355 & Clarksburg Rd	23.3	92.5	23.2	34.3	26.1	34.2
Clarksburg Town Policy Area (CLV 1,350)						
3. MD 121 (Clarksburg Rd) / Stringtown Rd & Gateway Center Dr	610	763	867	1044	957	1129
4. Clarksburg Rd & Gateway Center Dr (Unsignalized)	306	461	381	536	471	621

Source: The Traffic Group, Traffic Impact Analysis Dated July 14, 2021.

All four intersections operate below congestion standards and no additional improvements are necessary for these intersections for vehicular capacity.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed use on the Property. The Subject Property is located in the W-3 and S-3 water and sewer categories for service and the development plans for the extension of water and sewer lines to utilize public water and sewer. Other telecommunications and utility companies can adequately serve the Property. As conditioned, and as required by the Montgomery County Department of Permitting Services - Fire Access and Water Supply Section letter, dated March 1, 2022 and revised June 8, 2022, confirming adequate access for fire and emergency vehicle can be provided by the use of private roads which meet access standards and building height restrictions where necessary. Other public services such as police and health services are currently operating

within the standards set by the Growth and Infrastructure Policy (“GIP”) in effect.

Overview and Applicable School Test

The FY23 Annual School Test, approved by the Planning Board on June 16, 2022, and effective July 1, 2022, is applicable to this Application. This Application includes a total of 336 units consisting of 144 single-family attached units and 192 multi-family low rise units.

▪ School Adequacy Test

The Application is served by Clarksburg ES, Rocky Hill MS and Clarksburg HS. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

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
Clarksburg ES ²	342	301	88.0%	+41	No UPP	126	143	161
Rocky Hill MS	1,020	1,006	98.6%	+14	No UPP	140	218	371
Clarksburg HS	2,034	2,606	128.1%	-572	Tier 2 UPP			140

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 FY23 Annual School Test, Clarksburg ES and Rocky Hill MS do not require any UPP. However, Clarksburg HS requires a Tier 2 UPP. If the Application 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 Application, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

² Projected enrollment reflects the estimated impact of CIP P651901, which will reassign students between Clarksburg ES, William B. Gibbs, Jr. ES, Little Bennett ES, Wilson Wims ES and Clarksburg ES #9 in 2023.

With a net of 336 units that are not age-restricted, the proposed Application is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

Estimated Student Enrollment Impacts

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	0	0.185	0.000	0.108	0.000	0.154	0.000
SF Attached	144	0.225	32.400	0.123	17.712	0.159	22.896
MF Low-rise	192	0.107	20.544	0.058	11.136	0.070	13.440
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
TOTALS	336		52		28		36

On average, this Application is estimated to generate 52 elementary school students, 28 middle school students and 36 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school, 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 144 single-family attached and the 192 multi-family low-rise dwelling units included in this Preliminary 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 2 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.

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

Technical Review 50.4.3.K

A. Forest Conservation

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

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

Natural Resource Inventory/Forest Stand Delineation, Environmental Guidelines/Master Plan

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420210650 for this Property was approved on April 13, 2021. 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 which have recently been incorporated into the *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 ≥ 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.

The Subject Property is undeveloped with approximately 74 acres of forest and the remaining land in agricultural production. The Property is within the Little Seneca Creek - Ten Mile Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters, and within the LSTM 206 subwatershed as identified in the Master Plan. It is located within the Ten Mile Creek Special Protection Area. There are streams, wetlands, and

areas of 100-year floodplain within the environmental buffers, and areas with slopes that are fifteen percent and greater. There are no mapped highly erodible soils on the Property.

The Property includes three main tributary streams that flank the proposed Development Areas. The first stream (Stream 1) is located in the northeastern corner of the Property, where it enters the Property through a culvert under Frederick Road and quickly transitions to an expansive stream/wetland complex before it channelizes and exits the Property to the north, continues in a western direction off-site, adjacent to the northern boundary of the Property before exiting under I-270. The environmental buffer associated with this stream extends onto the Subject Property and is located to the north and west of Development Area 1. The other two streams enter the Property under Clarksburg Road and flank Development Area 2. The stream east of the development (Stream 2) will be impacted by the construction of the MD 355 Bypass where it intersects Clarksburg Road. This stream enters the Property through a culvert under Clarksburg Road and includes a narrow area of riparian wetlands on either side of the stream, before ultimately transitioning to include more expansive wetland areas as it flows west, ultimately joining the third tributary stream before exiting under I-270. The third stream (Stream 3) is located west of proposed Development Area 2 and includes stream channels and wetlands for its entire length before joining Stream 2 and exiting under I-270.

The Property contains approximately 74 acres of existing forest, 4 acres of wetlands, and 46 acres of environmental buffer. Slopes in excess of 15 percent, including slopes in excess of 25 percent are present. No highly erodible soils as listed in the Environmental Guidelines have been identified on the Property. There are no FEMA mapped floodplains on or immediately adjacent to the Property, but there is M-NCPPC mapped floodplain that has been incorporated into the environmental buffer. Seeps, springs, and ephemeral streams were identified and included within the Master Plan recommended environmental buffer. The NRI/FSD also identified numerous significant and specimen trees.

- **Environmental Buffer Encroachments**

As noted previously in the Master Plan conformance section of this report and on the attached Environmental Buffer Encroachment Exhibit (Attachments 4 and 5), the Application includes impacts to the environmental buffer for the construction of the proposed MD 355 Bypass where it intersects with Clarksburg Road, right-of-way improvements on Frederick Road, and encroachments for storm drain outfalls necessary to allow for safe conveyance of stormwater, natural surface trails, and a

pedestrian bridge that will provide a pedestrian connection between the two development areas. Some grading/grade tie-outs may be necessary within the buffer, but these impacts will be reviewed in more detail with the Site Plan application to ensure they are minimized as much as possible. The Application includes a stormwater management facility in Development Area 2 that is located within the environmental buffer; however, it was recently redesigned/relocated outside of the buffer, and conceptually approved by MCDPS. As conditioned, the Site Plan application will reflect the relocation of the facility outside of the environmental buffer. There may be additional areas of disturbance within the environmental buffer to provide access to and accomplish the stream restoration work recommended in the Master Plan. The limits of disturbance for the stream restoration work will be finalized on the Final Stream and Wetland Restoration Plan and the Final Forest Conservation Plan submitted with the Site Plan application. The final proposed impacts to the environmental buffer will be reviewed in more detail with the future site plan application. The Application will replant the environmental buffer and restore sections of stream channel identified as having been adversely affected by the past land use.

Additional Master Plan Environmental Requirements

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

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

Forest Conservation Plan

As required by the Forest Conservation Law, a Preliminary Forest Conservation Plan (FCP) for the Property was submitted with the Preliminary Plan. Although the Subject Property includes two different zones, the corresponding land use categories have the same conservation and afforestation thresholds so only one forest conservation worksheet is required. The FCP has an afforestation threshold of 15% and a conservation threshold of 20% of the net tract area.

The tract area for forest conservation purposes includes the 98.36-acre Subject Property plus 2.19 acres of off-site disturbance associated with this Application, minus 5.98 acres of road dedication, resulting in a total net tract area of 94.57 acres. There is a total of 73.94 acres of existing forest on the Subject Property. The Application will retain 55.87 acres and remove 18.07 acres of forest. Approximately 1.35 acres of the 18.07 acres of forest clearing accounted for in the forest conservation worksheet will not actually be cleared by this Application. However, since this forest is either located within existing easements or ROW and cannot be protected in a conservation easement, or will no longer meet the definition of forest, it is counted as cleared in the forest conservation worksheet. The proposed forest clearing does not generate a forest planting requirement; however, the Application includes approximately 4.12 acres of reforestation within the on-site environmental buffers. Per the Environmental Guidelines, all properties located within Special Protection Areas are required to reforest any unforested environmental buffers. Any of this forest planting that is not required to meet requirements of the Forest Conservation Law may be used to create a forest bank for use by other properties to meet their forest conservation requirements. Additionally, the Master Plan suggests incentives to encourage additional forest planting on properties in Ten Mile Creek, including creation of forest banking opportunities. In areas within the environmental buffer where trees cannot be planted due to conflicting easements (i.e., stormwater management, utilities), the Applicant will plant a meadow habitat with native species favored by pollinators. This Application will plant 4.12 acres of new forest on the Property, when added to the 55.87 acres of retained forest, results in approximately 60 acres of forest protected via Category I Conservation Easements.

The Preliminary Plan is subject to Section 22A-12(f) of the Forest Conservation Law, which requires any development in a cluster or other optional method of development in a one-family residential zone to retain or plant a specified percentage of the Property in forest. For this Application, the minimum on-site forest retention must be equal to the conservation threshold. The conservation threshold determined based on the land use category and the acreage of the Property, for this Property is 18.91 acres. The Application will retain 55.87 acres of forest, thereby complying with this provision of the Forest Conservation Law.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a

variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to fifteen 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 for residential development 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 and disturbance to the specified trees are due to the development of the Property as anticipated in the Master Plan and Zoning Ordinance. The Property contains numerous large trees located within the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of the site and still meet the objectives of the applicable Master Plan is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, Master Plan recommendations for environmental protection, and the development standards of the zone.

3. *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 need for a variance is a result of the existing conditions and the proposed site design and layout on the Subject Property, and not 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.*

This approval is conditioned on mitigation that approximates the form and function of trees removed. Therefore, the granting of the variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP will reforest or plant native meadow species within the currently unforested stream buffers, as well as provide additional mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

Mitigation for the tree removals is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. No mitigation is required for Protected Trees impacted but retained.

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

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

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

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

- **MCDPS and MCDEP Water Quality Plan Review Elements**

In a letter dated June 6, 2022, MCDPS has conditionally approved the elements of the SPA Preliminary Water Quality Plan under their purview with conditions to be addressed with the Final Water Quality Plan review with the Site Plan application.

Site Performance Goals

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

Per the MCDPS Preliminary Water Quality Plan approval, the required goals will be met via micro bioretention facilities. The Water Quality Plan meets the requirements of Chapter 19 by instituting the highest standards of protection for proposed development areas, avoiding overflow discharges onto steep slopes, managing discharges from stormwater outfalls at non-erosive velocities, and minimizing environmental buffer impacts associated with ESD overflow outfalls

Monitoring

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

- **Planning Board Water Quality Plan Review Elements**

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

Environmental Buffer Protection

NRI/FSD No. 420210650 for this Property was approved by Staff on April 13, 2021. The approved NRI/FSD incorporates the expanded environmental buffer requirements outlined in the Master Plan. There are some existing encroachments into the environmental buffers on the Property that will remain. These include areas in existing easements for a gas line that runs adjacent and parallel to I-270, as well as utility easements held by Potomac

Edison along I-270. The Application includes some proposed impacts to the environmental buffers.

The Application includes impacts to the environmental buffer for the construction of the proposed MD 355 Bypass where it intersects with Clarksburg Road/MD 121. There is an existing stream and associated wetland that flows under MD 121. There are no available alternatives to make this road connection since the stream and wetlands are located just inside the Property boundary, the Property contains limited frontage along Clarksburg Road, and locating the intersection further north, would put the connection on an off-site, adjacent, already developed property. Required right-of-way improvements including shoulder widening, sidewalk installation, and an extension of the existing culvert to accommodate the improvements along Frederick Road/MD 355 will result in some impacts to the environmental buffer. The Application includes a stormwater management facility in Development Area 2 that is located within the stream buffer; however, it was recently redesigned/relocated outside of the buffer, and conceptually approved by MCDPS. There may be some grading/grade tie-outs that remain within the buffer, but these impacts will be reviewed by Staff to ensure they are minimized as much as possible. There are some other minor encroachments proposed within the environmental buffers for storm drain outfalls necessary to allow for safe conveyance of stormwater, natural surface trails, and a pedestrian bridge that will provide a pedestrian connection between the two development areas. The Environmental Guidelines (page 18) allow for "minimized buffer intrusions for construction of non-erosive storm drain outfalls". The Application will replant the environmental buffer with forest or native meadow habitat and restore sections of stream channel that have been adversely affected by the past land use. The proposed environmental benefits will mitigate the effects of the stream valley buffer encroachments. Where not encumbered by existing or proposed easements (i.e., utilities, stormwater management), the environmental buffers will be protected in Category I Conservation Easements. The proposed impacts will be reviewed in more detail with the future Site Plan application.

Forest Conservation

The Applicant submitted a Preliminary Forest Conservation Plan for review with the Preliminary Plan Application. The Application meets all applicable requirements of Chapter 22A of the Montgomery Forest Conservation Law as discussed previously in the Forest Conservation findings section. Per SPA requirements outlined in the Environmental Guidelines, areas of the environmental buffer currently lacking forest and not encumbered by other easements, will be reforested, forest plantings will occur during the first planting season after issuance of grading permits where possible, and a five-

year maintenance program to better ensure forest survival, with an emphasis on controlling invasive species is required. The retained and planted forest on-site will be protected through a Category I Conservation Easement.

Impervious Surfaces

Impervious surface restrictions for development projects in this portion of the Ten Mile Creek SPA are set forth in the Clarksburg East Environmental Overlay Zone. The Application is subject to Chapter 59, Section 4.9.5, the Clarksburg East Environmental Overlay Zone, which imposes a fifteen percent impervious surface limit calculated over the "total area under application for development". This includes the Subject Property (98.35 acres) plus off-site disturbance (2.19 acres), for a total of 100.54 acres. The Property will be developed for the proposed residential use resulting in approximately 601,080 square feet (13.80 acres) of impervious surface that is subject to the Overlay Zone requirements. The proposed 601,080 square feet of impervious surface translates to 13.72 percent, which is less than the 15 percent permitted by the Overlay Zone for the area under Application. There are additional impervious surfaces not included in these calculations that are required per conditions of approval for transportation related improvements. As conditioned, these additional impervious surfaces will be included in an updated Impervious Surface Plan submitted prior to certification of the Preliminary Plan. The Impervious Surface Plan will demonstrate compliance with the 15 percent impervious surface limit, as required by the Zoning Ordinance and as conditioned in this report.

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

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

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.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 10 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 Vice Chair Verma, seconded by Commissioner Cichy, with a vote of 4-0-1; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, and Patterson, voting in favor of the motion, Commissioner Rubin abstaining, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.



Casey Anderson, Chair
Montgomery County Planning Board

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