

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-086
Preliminary Plan No. 120210180
Hammer Hill
Date of Hearing: July 28, 2022

RESOLUTION

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

WHEREAS, on March 25, 2021, Jaisai Properties, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 3.52 acres of land in the CRT-0.5, C-0.5, R-0.5, H-45 and Clarksburg East Environmental Overlay zones, located at 23319 Frederick Road and 23100 Stringtown Road ("Subject Property"), in the Clarksburg Policy Area and 2014 *Clarksburg Ten Mile Creek Limited Amendment Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120210180, Hammer Hill ("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 15, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 28, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to certain conditions, on the motion of Commissioner Rubin, seconded by Vice Chair Verma with a vote of 5-0, Chair Anderson, Commissioners Cichy, Patterson, Rubin and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210180 to create one lot on the Subject Property, subject to the following conditions:¹

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.

- 1) This Preliminary Plan is limited to one (1) lot for a 13,600 square foot Day Care Center (Over 30 Persons) as defined by Section 59.3.4.4.F in addition to the existing 3,200 square foot Clinic (Up to 4 Medical Practitioners) as defined by Section 59.3.5.7.A.
- 2) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No.120210180, approved as part of this Preliminary Plan:
 - a) The Applicant must plant variance tree mitigation plantings on the Subject Property with a minimum size of 3-inch caliper trees. The number of trees and planting locations are shown on the approved Final Forest Conservation Plan.
 - b) The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
- 3) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated July 22, 2022, and hereby incorporates them as conditions of the Preliminary Plan approval except for the final paragraph of Comment #1 on Page 2 of the MCDOT letter discussing an additional access point onto Stringtown Road. In addition, any alternatives to enhance pedestrian level of comfort with the conditioned LATR mitigation improvements referred to in Comment #3 of the MCDOT letter must be identified and agreed upon prior to filing a record plat. The Applicant must comply with each of the other recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 4) The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("SHA") in its letter dated June 24, 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.
- 5) The Planning Board has reviewed and accepts the recommendations of SHA in its second letter dated July 5, 2022, and incorporates them as conditions of the Preliminary Plan approval except for Comments #2 and #3 from the Traffic Development & Support Division including the Length Required for Partial Acceleration Lanes table regarding acceleration and deceleration lanes. The Applicant must comply with each of the other 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.

- 6) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its Combined Preliminary/Final Water Quality Plan/Site Development Stormwater Management Plan letter dated April 5, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
- 7) The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated August 10, 2016 and amended on February 1, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
- 8) 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 sixty (60) feet from the existing pavement centerline along the Subject Property frontage for Stringtown Road.
 - b) All land necessary to accommodate sixty-five (65) feet from the existing pavement centerline along the Subject Property frontage for Frederick Road.
- 9) Prior to the recordation of plat(s), the Applicant must ensure construction of the following off-site improvement(s) by satisfying MCDOT requirements to construct a 10-foot-wide sidepath on the north side of Stringtown Road that extends from the Subject Property boundary and across the frontage of property owned by Montgomery County to the intersection of Stringtown Road and Frederick Road/MD 355.
- 10) Prior to the issuance of the building permit, the Applicant must satisfy all necessary requirements of MCDPS and/ or MDSHA to ensure construction of the following:
 - a) A 10-foot-wide sidepath along the Property frontage on Stringtown Road
 - b) An off-site improvement of a 10-foot-wide sidepath along Stringtown Road across the frontage of the Montgomery County-owned property to the intersection of Stringtown Road and Frederick Road/MD 355
 - c) A 6-foot-wide sidewalk along the Property frontage on Frederick Road/MD 355
 - d) Provide the equivalent of \$5,063 worth of local street tree plantings in locations reviewed and approved by Planning Staff, MCDOT and/or SHA, unless an alternative is approved by Planning Staff prior to record plat.

- 11) Prior to the issuance of a Use and Occupancy Certificate for the day care center, construction of the following frontage improvements must be completed:
 - a) A 10-foot-wide sidepath along the Property frontage on Stringtown Road
 - b) An off-site improvement of a 10-foot-wide sidepath along Stringtown Road across the frontage of the Montgomery County owned property to the intersection of Stringtown Road and Frederick Road/MD 355
 - c) A 6-foot-wide sidewalk along the Property frontage on Frederick Road/MD 355
 - d) A northbound left-turn lane on Frederick Road/MD 355 including any associated pavement widening to accommodate this improvement.
 - e) Plant the equivalent of \$5,063 worth of local street tree plantings in locations reviewed and approved by Planning Staff, MCDOT and/or SHA, unless an alternative is approved by Planning Staff prior to record plat.
- 12) Any change to the required frontage improvements on Frederick Road/MD 355, such as acceleration and/or deceleration lanes, will require a Preliminary Plan Amendment to be reviewed and approved by the Planning Board.
- 13) Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for frontage improvements.
- 14) Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
- 15) The record plat must show all necessary easements.
- 16) Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of any subsequent Site Plan(s) associated with this Preliminary Plan. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks and bikepaths is determined through site plan review and approval.
- 17) The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).
- 18) The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and prior to the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.
- 19) The Preliminary Plan must contain the following note:

"Unless specifically noted on this plan drawing or in the 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 approval."

- 20) Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a) Show resolutions and approval letters from County Agencies on the certified set.
 - b) Include the approved Fire and Rescue Access Plan in the certified set.
 - c) Show a paved pedestrian path from the daycare building to the property line shared with the Clarksburg Elementary School. The exact alignment shall be approved by Staff at the time of Certified Preliminary Plan review.
 - d) Illustrate the locations of off-site street tree plantings, or alternative improvements, to fulfill the LATR equivalent of \$5,063 to be reviewed and approved by Planning Staff, MCDOT and/or SHA
 - e) Submit a revised Preliminary Forest Conservation Plan to reflect the proposed pedestrian path from the daycare building to the Clarksburg Elementary School for Staff review, including an updated Tree Variance Request and associated mitigation, if required.
 - f) Revise the Tree Variance Exhibit to reflect the Preliminary Plan number rather than the Site Plan number and include it as Sheet 3 of the Preliminary Forest Conservation Plan.
 - g) Submit the Impervious Surface Exhibit that has been updated to reflect the required pedestrian path from the daycare building to the Clarksburg Elementary School and signed by a professional engineer.
 - h) Ensure consistency of the Public Open Space and Rural Open Space calculations between the data table and the open space exhibit, Sheet 004.

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 Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the lot are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type (general building type) and use contemplated for the Property.

The lot was reviewed for compliance with the dimensional requirements of the CRT-0.5, C-0.5, R-0.5, H-45 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage and can accommodate the existing Clinic (Up to 4 Practitioners) and the Daycare Center (Over 30 persons) which can reasonably meet the width and setbacks requirements in that zone. The Application is approved under the standard method in accordance with Section 4.5.3 of the Zoning Ordinance.

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

The Preliminary Plan substantially conforms to the recommendations included in the 1994 *Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area* ("Clarksburg Master Plan") and the 2014 *Approved and Adopted 10 Mile Creek Area Limited Amendment Master Plan* ("10 Mile Creek Master Plan").

1994 Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area

The Clarksburg Master Plan is the underlying master plan for the Clarksburg vicinity. The Preliminary Plan meets the general goals of the Clarksburg Master Plan by "promoting a healthy economy, including a broad range of business, service, and employment opportunities at appropriate locations" (Page 10). The Clarksburg Master Plan "proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District" (page 26). The Clarksburg Master Plan also "continues the historic function of Clarksburg as a center of community life" (Page 26).

The Property falls within the analysis area identified as the "Town Center District" (Page 41). The Town Center District includes the Clarksburg Historic District, and both areas are discussed in detail on pages 42-53. The Preliminary Plan complies with the following recommendations:

- Create a Town Center which will be a strong central focus for the entire Study Area.
- Encourage a mixed-use development pattern in the Town Center to help create a lively and diverse place.

- Encourage infill within the historic district in accord with the historic development patterns.

Consistent with the Historic District design guidelines (Pages 47-48), the Project also:

- Orients the building to the street, with parking behind.
- Preserves and enhances the existing rural character of streets.
- Assures that all road improvements, including both changes to existing roads and creation of new roads, are sensitive to the historic character of the Clarksburg Historic District.
- Provides new construction compatible with existing historic buildings.
- Assures that prominent resources in the Historic District are highlighted as focal points.
- Encourages appropriate landscaping, lighting, open space and creation of a gateway.

2014 Approved and Adopted 10 Mile Creek Area Limited Amendment Master Plan

The 10 Mile Creek Master Plan “retains the core of the Clarksburg Master Plan’s vision, refining the Clarksburg Master Plan’s recommendations to better achieve two important objectives: the creation of a complete, well-defined corridor town that provides jobs, homes, and commercial activities; and the preservation of natural resources critical to the County’s well-being” (Page 5). The Property is located in the far northeast corner of the 10 Mile Creek Master Plan boundary where the 10 Mile Creek Master Plan emphasizes “community building,” as opposed to the majority of the plan boundary which emphasizes “environmental protection” (Page 13). In furtherance of the more specific goals within “community building,” the Preliminary Plan complements the Town Center, strengthens the Historic District, and balances mixed-use (Page 13).

The Property falls within one of the subwatershed boundaries with the most impervious surface (Pages 15 and 17). The 10 Mile Creek Master Plan allows the highest levels of imperviousness for new development in the Town Center District where existing imperviousness levels are already high (Page 17). The Preliminary Plan proposes a shared driveway consistent with the 10 Mile Creek Master Plan recommendations (Page 21).

The Property also falls within the area of the 10 Mile Creek Master Plan “East of I-270” and within the Historic District. The 10 Mile Creek Master Plan rezoned properties within the Historic District to CRT-0.5 C-0.5 R-0.5 H-45 and excluded the Historic District from the Clarksburg East Environmental Overlay Zone (Page 38). The 10 Mile Creek Master Plan also provides guidelines to the Historic Preservation Commission when reviewing historic area work permits. “The

Clarksburg Master Plan identified the Historic District as a focal point of the Town Center, encouraging sensitive and appropriate infill development in the District as an important component of the Clarksburg Master Plan's objective for the Town Center" (Page 38). The CRT Zone "allows densities and building heights that will encourage infill development in the District and will allow new uses to be introduced that may help to invigorate the District" (Page 38). The Preliminary Plan Application is consistent with these recommendations and will help to stabilize and reinvigorate the Historic District, while also serving an important Montgomery County need.

The Preliminary Plan is in substantial conformance with 1994 *Approved and Adopted Clarksburg Master Plan and Hyattstown Special Study Area* and the 2014 *Approved and Adopted 10 Mile Creek Area Limited Amendment Master Plan*.

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

Roads and Transportation Facilities

Frederick Road/MD 355 is classified as a Business District Street with planned BRT in the *2018 Master Plan of Highways and Transitways* (MPOHT) and as a Town Center Boulevard under the *2021 Complete Streets Design Guide* (CSDG) with an existing 55 feet of right-of-way, which will be maintained with additional dedication. Stringtown Road is classified as an arterial street in the MPOHT and as a Town Center Boulevard in CSDG with a recommended right-of-way width of 120 feet with 4 travel lanes. This Application will provide dedication to support 60 feet of dedication from the road centerline along the frontage.

The 2018 *Bicycle Master Plan* recommends a sidepath along Stringtown Road. The Applicant will construct a 10 foot-wide sidepath along the frontage and continue the sidepath as an off-site improvement approximately 300 feet across the frontage of the neighboring property owned by Montgomery County, to the Stringtown Road and Frederick Road/MD 355 intersection.

Local Area Transportation Review (LATR)

The Application will produce a net increase of 151 and 144 net-new person trips, exceeding the 50 person-trip threshold warranting a transportation study. A full multimodal transportation study following the *2021 LATR Guidelines* and under the *2020 – 2024 Growth and Infrastructure Policy* was conducted and submitted on February 26, 2021 and revised May 19, 2022.

Table 1 — Trip Generation*

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Daycare (ITE 565)	216 Students	80	71	151	68	76	144
Net New Person Trips	--	--	--	151	--	--	144

*Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2021 LATR guidelines. Figures are rounded to nearest whole number. Source: Wells & Associates Traffic Impact Analysis Revise May 19, 2022.

Four intersections were studied, all within the Clarksburg Town Center Policy area and studied using the policy area's recommended HCM methodology. The policy area has a 63 second allowable congestion standard based on the Highway Capacity Manual ("HCM").

Table 2 — Highway Capacity Manual Methodology - Seconds of Vehicle Delay

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Clarksburg Town Center Policy Area (HCM 63 Seconds)</i>						
1. Clarksburg Rd and MD 355	39	54	34	45	34	45
2. Redgrave Place and MD 355	6	3	8	8	9	10
3. Site Driveway and MD 355	1	0	12	12	16	20
4. Stringtown Road and MD 355	32	41	39	48	40	48

All four intersections will operate below the 63 second congestion standards and no improvements are necessary for congestion purposes.

Turning Lanes

In order to address queuing concerns, the Applicant will construct an additional left turn lane to enter the Property from the northbound direction of Frederick Road/MD 355. SHA did not recommend acceleration and deceleration lanes to serve the Property's main access in their June 24, 2022 letter, at Planning Staff's request. However, SHA issued a separate letter contradicting SHA's previous letter, dated July 5, 2022, for the review of the Traffic Impact Study in which acceleration and deceleration lanes are recommended. The Planning Board rejects testimony provided by SHA staff member Kwesi Woodroffe stating that, at a minimum, a deceleration should be constructed to avoid rear end collisions with

traffic making a right turn into the Subject Property. On a road with a posted speed limit of 30 mph, the Planning Board determined that if SHA is concerned about collisions, they should improve their right-of-way management rather than add additional deceleration or acceleration lanes. The Planning Board inquired as to the status of the request from M-NCPPC Staff made at the beginning of the review process to reduce the posted speed limit from 30 mph to 25 mph. Mr. Woodroffe stated that SHA was still looking into it. The Planning Board rejects any frontage improvement which requires acceleration and/or deceleration lanes because they would not promote pedestrian and bike safety and are out of character with the Clarksburg Historic District. The Planning Board recommends SHA consider lowering the posted speed limit from 30 mph to 25 mph, or less, to help mitigate the need for any acceleration or deceleration lanes. Acceleration and deceleration lanes to serve the Property's main access are not required and any additional improvement, other than those conditioned in this resolution, to the Property access will require an amendment to the approved plans in coordination with the Historic Preservation Commission.

Multimodal analysis

The transportation study analyzed multimodal transportation facilities for pedestrians, bicyclists, transit, and ADA compliance. Serious deficiencies in these networks were found in all studies, including the local bicycle and pedestrian networks within a 750-foot radius of the Subject Property.

Facilities along major roads, particularly Stringtown Road and Frederick Road, for the most part are either deficient or nonexistent, exceeding the minimum Level of Traffic Stress standards for cycling and Pedestrian Level of Comfort for walking. A majority of the study area ADA ramps are deficient. No bus stops in the study vicinity currently offer shelter. The Applicant is providing a 10-foot wide sidepath off-site along Stringtown Road across the frontage of the Montgomery County-owned property to the intersection of Stringtown Road and Frederick Road/MD 355. In addition, sidewalks and sidepaths are provided across the Property frontage to help improve these conditions.

Additionally, the study area has a sizable history of crashes; within the 750-foot area, 52 crashes were recorded between January 2017 and May 2022. Two of these were serious, injury-causing crashes. Three crashes involved pedestrians or bicyclists. Speed studies were conducted along all four legs proximate to the Frederick Rd. and Stringtown Rd. intersection. In all locations, in both directions, 85th percentile speeds exceed 120% of posted speeds. Additional speed enforcement along with geometric improvements to both Stringtown Rd. and Frederick Road may improve this condition. In addition, the applicant will be constructing a left-turn lane for northbound Frederick Road which should improve some of the turning movements.

According to the proportionality guidelines of the 2022 LATR, the Applicant is limited to a maximum of \$5,063 in off-site LATR-related mitigation improvements. As conditioned, the Applicant proposes to fulfill this mitigation by planting additional street trees in the vicinity to improve user comfort along bike and pedestrian facilities, unless an alternative is approved by staff prior to record plat.

As conditioned, public facilities are adequate for the use.

Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lot. The Subject Property is in the W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on August 10, 2016 and amended for the current Preliminary Plan Application on February 1, 2021. The Fire Department Access Plan indicates that fire access will be provided by the existing driveway access off of Frederick Road/MD 355 to access the existing medical office and daycare facilities. Fire apparatus turn-around can be achieved on-site. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the *Growth and Instructure Policy* ("GIP") in effect at the time that the Application was accepted.

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

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* and the Forest Conservation Law, as conditioned and described below.

A. Forest Conservation

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

The Applicant submitted a Preliminary Forest Conservation Plan with the current development application for Preliminary Plan No. 120210180. The Application satisfies the applicable requirements of the Forest Conservation Law, County Code, Chapter 22A and complies with the

Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned CRT-0.5 C-0.5 R-0.5 H-45 and is assigned a Land Use Category of Mixed Use Development Area ("MPD") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 3.52-acre Subject Property plus 0.28 acres of offsite disturbance associated with this Application, for a total net tract area of 3.80 acres. Since there is no existing forest within the net tract area, the result is an afforestation requirement of 0.57 acres, which the Applicant proposes to meet by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment.

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 forty-three (43) 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 a day care facility and existing medical clinic 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, location of the trees and necessary site design requirements. The Property contains numerous Protected

Trees located within the developable area of the site. Granting a variance to allow disturbance within the developable portion of the site and meeting the objectives of the 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the CRT and CEE Overlay zones, and necessary design requirements of this Application.

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

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer. The Application proposes mitigation by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance 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. This results in a total mitigation of 43.75 inches with the installation of fifteen 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easement. 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.*

SPECIAL PROTECTION AREA WATER QUALITY PLAN

The Preliminary Plan satisfies all of the applicable requirements of Chapter 19 of the Montgomery County Code, the requirements of the Clarksburg East Environmental Overlay Zone, and the Environmental Guidelines, as conditioned and discussed below.

A portion of this Property is located within the Clarksburg Special Protection Area ("SPA") and the remainder is within the Ten Mile Creek SPA, on privately owned property where land disturbance is proposed; as such, it is required to obtain approval of a water quality plan under Section 19-62(b) of the Montgomery County Code.

As part of the requirements of the SPA law, a Preliminary Water Quality Plan should be reviewed in conjunction with a Preliminary Plan Application. The Final Water Quality Plan is reviewed in conjunction with the Site Plan Application. Under Section 19-65 of the Montgomery County 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 a Water Quality Plan. MCDPS and MCDEP review the Preliminary Plan Application for site performance goals, stormwater management, sediment and erosion control, and monitoring of streams and Best Management Practice performance. The Planning Board's responsibility is to determine if SPA forest conservation and planting requirements, environmental buffer protection, and limits on impervious surfaces have been satisfied.

MCDPS AND MCDEP SPECIAL PROTECTION AREA REVIEW ELEMENTS

The Preliminary Plan received an approved Combined Preliminary/Final Water Quality Plan/Site Development Stormwater Management Plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on April 5, 2022. The Application will meet stormwater management goals through the use of micro bioretention with enhancement. The approval is for elements of the Water Quality Plan of which DPS has lead agency responsibility and does not include limits on imperviousness or buffer encroachments. Stream monitoring and BMP monitoring fees will be required by MCDEP per Special Protection Area regulations.

Planning Board Special Protection Area Review Elements

Following is an analysis of the Planning Board's responsibilities in the review of the Water Quality Plan.

A. PRIORITY FOREST CONSERVATION AREAS

The Preliminary Plan meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The Preliminary FCP was submitted with the Preliminary Plan Application and the Final FCP was submitted with the accompanying Site Plan. There is no forest on the Property, so there is no forest to be retained. The FCP results in a 0.57-acre forest planting requirement, which the Applicant proposes to meet by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment. There are no environmental buffers on the Property, so the SPA requirement to plant unforested environmental buffers is not applicable to this Preliminary Plan Application.

B. ENVIRONMENTAL BUFFER PROTECTION

An NRI/FSD No. 420210690 was approved by Staff in January 2021. The approved NRI/FSD did not identify any environmental buffers on the Property, so this requirement is not applicable to this Application.

C. IMPERVIOUS SURFACES

The Property is partially located within the Clarksburg SPA and partially within the Ten Mile Creek SPA. The Clarksburg SPA does not have a numerical limit on impervious surfaces; however, a main goal for development in all SPAs is to reduce or minimize impervious surfaces. The remainder of the Property is located within the Ten Mile Creek SPA. In addition, the portion of the Property located within the Ten Mile Creek SPA and outside of the Historic District, is located within the Clarksburg East Environmental Overlay Zone (properties within the Historic District are not included within the boundaries of the Overlay Zone). Per Chapter 59, Section 4.9.5.D.1, impervious surfaces are limited to 15% of the area under Preliminary Plan Application and Site Plan Application within the Overlay Zone.

The Preliminary Plan Application includes an Impervious Surface Exhibit. The Application proposes to construct 14,262 square feet of impervious surfaces within the Clarksburg SPA which includes the existing medical building, driveway, parking lot and sidewalks that will remain, resulting in 21.5% imperviousness over the 1.53-acre portion of the Property within the Clarksburg SPA. Approximately 30,928 square feet of impervious surfaces are within the Ten Mile Creek SPA, outside of the Clarksburg East Environmental Overlay Zone. This includes the majority of the daycare building and

associated parking lot and sidewalks. This results in 38.2% imperviousness over the 1.86-acre portion of the Property within the Ten Mile Creek SPA, but outside of the Clarksburg East Environmental Overlay Zone. In addition, the Preliminary Plan Application proposes 4,098 square feet of impervious surfaces for the construction of a portion of the daycare building, within the Clarksburg East Environmental Overlay Zone. The Overlay Zone exempts Master Planned bikeways, including shared use paths from the impervious surface calculations. The result is 13.8% imperviousness within the Clarksburg East Environmental Overlay Zone, which is below the Overlay Zone's limit of 15%. As conditioned, prior to Certification of the Preliminary Plan, the Impervious Surface Exhibit and calculations will be updated to include the required pedestrian path between the daycare building and Clarksburg Elementary School.

The Applicant minimized impervious surfaces as much as possible; however, the existing features within the Clarksburg SPA which include the driveway, medical building and parking spaces are on the historic site and are to remain. The Application will remove an existing patio that is not needed. Within the Ten Mile Creek SPA, impervious surfaces are limited to the daycare building and required sidewalks and parking, including leadwalks from Stringtown Road. Vehicular access to the daycare building will be provided by sharing the existing driveway from Frederick Road that also serves the medical building. The playgrounds for the daycare building are located within the Overlay Zone, but these areas will remain pervious in the form of mulch or wood chips.

The Preliminary Plan Application meets all applicable requirements of Chapter 19 and Chapter 59 for SPA Water Quality Plans.

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.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory for burial sites.

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

On June 8, 2022, the Historic Preservation Commission ("HPC") met to review the final revisions of the Application prior to the review by the Planning Board. The HPC was supportive of the Preliminary Plan Application. Several Commissioners recommended minimizing the retaining walls/ramp at the south side of the

Subject Property, if feasible. The HPC recognized the Property constraints and the need for handicapped accessible access from Stringtown Road. Ultimately, the HPC determined that they would support the project when the Applicant returns to the HPC with an Application for a Historic Area Work Permit ("HAWP") based on their letter dated June 24, 2022.


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 21 2022 (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Rubin, seconded by Vice Chair Verma, with a vote of 5-0, Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin voting in favor at its regular meeting held on Thursday, September 8, 2022, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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