

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-009  
Preliminary Plan No. 120210140  
8001 Wisconsin Avenue  
Date of Hearing: January 26, 2023

FEB 08 2023

## RESOLUTION

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

WHEREAS, on December 28, 2020, B.F. Saul Company (“Applicant”) filed an application for approval of a preliminary plan to create 1 lot on 2.74 acres for mixed use development of up to 350 multi-family dwelling units and up to 15,000 square feet of non-residential uses on 2.74 acres of CR-3.0 C-3.0 R-2.75 H-90’, CR-3.0 C-2.0 R-2.75 H-90’, CR-0.5 C-0.5 R-0.5 H-70’, CRT- 0.5 C-0.25 R-0.5 H-70’ and Bethesda Overlay Zoned-land, located on the block bounded by Wisconsin Avenue, Highland Avenue, West Virginia Avenue, and Tilbury Street (“Subject Property”) in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120210140, 8001 Wisconsin Avenue (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 13, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 26, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Branson, seconded by Commissioner Hill, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill and Piñero voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120210140 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

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

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

### **General Approval**

1. This Preliminary Plan is limited to 1 lot for up to 350 multi-family dwelling units and up to 15,000 square feet of nonresidential uses.

### **Adequate Public Facilities and Outside Agencies**

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

### **Plan Validity Period**

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

### **Outside Agencies**

#### **4. MCDOT Letter**

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letters dated January 31, 2022, and February 19, 2021, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations provided in the letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

5. Before the issuance of access permits, the Applicant must satisfy the Montgomery County Department of Transportation’s requirements for access and improvements.

#### **6. MDOT SHA Letter**

The Planning Board has reviewed and accepts the recommendations of the Maryland Department of Transportation State Highway Administration (“MDOT SHA”) in its letter dated June 7, 2022, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations provided in the letter, which may be amended by MDOT SHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.

**8. MCDPS Stormwater**

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated December 3, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations provided in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

**9. MCDPS Fire Department Access**

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated December 16, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations provided in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

**Transportation**

**Frontage Improvements**

**10. Right-of-Way Dedication**

The Applicant must dedicate their portion of rights-of-way along all four (4) frontages to the full width mandated by the Bethesda Downtown Sector Plan or as otherwise designated on the Certified Preliminary Plan, and show on the record plat(s) the following dedications:

- a) A dedication of the Wisconsin Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 122-foot-wide right-of-way.
- b) A dedication of the Highland Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.
- c) A dedication of the West Virginia Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.

- d) A dedication of the Tilbury Street frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.

#### **Future Site Plan Approval Required**

11. Before clearing or 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, site circulation, open space, sidewalks and designated bikeway will be determined through site plan review and approval.

#### **Environment**

##### **Forest Conservation**

12. Before any clearing, grading or demolition on the site, the Applicant must submit and receive approval of a Final Forest Conservation Plan, which must be consistent with the approved Preliminary Forest Conservation Plan and associated conditions.
13. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
14. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
15. Before the start of any demolition, clearing, grading or construction, whichever comes first, for this development Application, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.28 acres of afforestation/reforestation requirement, or as shown on the certified Final Forest Conservation Plan.
16. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the certified Final Forest Conservation Plan.
17. The Applicant must plant the variance tree mitigation plantings on the Subject Property, with a minimum size of 3 caliper inches, totaling at least 27 caliper inches, or as shown on the certified Final Forest Conservation Plan. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. Adjustments to the planting locations of these

trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

18. Before any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance credited toward meeting the requirements of the FCP.
19. Before any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures.

#### **Record Plats**

20. There shall be no clearing or grading of the site before recordation of plat(s).

#### **Easements**

21. The record plat must show necessary easements.

#### **22. Eastern Greenway**

- a) The record plat must show a covenant for public use for the Eastern Greenway on the Subject Property, excluding portions of the Eastern Greenway that are in the publicly dedicated right-of-way. The final terms of the covenant will be determined at Site Plan.
- b) The area subject to the covenant must:
  - i. be a minimum of 70 feet in width, or other width determined at Site Plan, as measured from the face of curb on Tilbury Street to the nearest above-ground building face, excluding public right-of-way. Any portion of the Eastern Greenway that is in the Tilbury Street right-of-way dedicated by the Applicant will continue to be included in the width of the Eastern Greenway for purposes of determining building height; and
  - ii. extend from Highland Avenue to the north and West Virginia Avenue to the south, excluding public right-of-way.

**Certified Preliminary Plan**

23. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
24. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan 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.*

25. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a) Show resolutions and approval letters on the certified set; and
  - b) Include the approved Fire Access Plans in the certified set.

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.***

- a) *The block design is appropriate for the development or use contemplated***

The proposed block design remains unchanged from the existing conditions at present. The entire block will be consolidated to one lot for mixed use development, and is of an appropriate size, width, and shape for the proposed density of up to 375,000 square feet and mix of uses proposed.

- b) *The lot design is appropriate for the development or use contemplated***

Section 50.4.3.E.2.f.iii of the Montgomery County Subdivision Regulations indicate that corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant, which would

require a 25-foot truncation at all four the corners of the Site: Wisconsin Avenue and Highland Avenue, Wisconsin Avenue and West Virginia Avenue, Tilbury Street and Highland Avenue, and Tilbury Street and West Virginia Avenue for traffic operations and safety. Due to existing WMATA easements, the Preliminary Plan reflects a 25-foot truncation at the intersection of Wisconsin Avenue and West Virginia Avenue. However, a 25-foot truncation is unnecessary for traffic operations and safety at the Wisconsin Avenue and Highland Avenue, Highland Avenue and Tilbury Street, and West Virginia Avenue and Tilbury Street intersections. Historically, Planning and MCDOT have not required full truncations in urban settings to accommodate building placement as long as sight distance and traffic functions are not impeded. The Preliminary Plan proposes a 15-foot truncation at the intersection of Wisconsin Avenue and Highland Avenue, and 10-foot truncations at the intersections of Highland Avenue and Tilbury Street, and West Virginia Avenue and Tilbury Street. As recommended by the Bethesda Design Guidelines, the Project accommodates a build-to-line of 25 feet on Wisconsin Avenue, and 14.5 feet on Highland Avenue. These proposed pedestrian through zones from building face to edge of curb will allow for clear visibility for different movements (e.g., vehicular, pedestrian, and bicycle) along the intersection of Wisconsin Avenue and Highland Avenue. Moreover, the Project incorporates a 70-foot build-to line along Tilbury Street to accommodate the Sector Plan recommended Eastern Greenway. Given that this portion of the Property will be improved with public open space, a 25-foot truncation is not needed for adequate sight distance.

The Applicant is seeking approval from the Planning Board for a reduced truncation at these corners as part of the proposed record lot. The Project incorporates setbacks that are substantially greater than the existing condition at these corner locations. The build-to-lines and building form of the ground floor will enhance vehicular and pedestrian visibility at this intersection such that a reduced truncation allows for enhanced traffic operations and safety. Sight Distance evaluations were submitted for review by MCDOT, which approved the proposed distances with the reduced truncation. The Applicant will be required to record a Public Improvement Easement (PIE) at these corners in lieu of truncation. The Applicant has also committed to keeping this area free and clear of permanent items that could obstruct motorists view of the adjacent roadway network. The Planning Board approves the Applicant's request to eliminate the truncation at the corners of i) Wisconsin Avenue and Highland Avenue, ii) Tilbury Street and Highland Avenue, iii) and Tilbury Street and West Virginia Avenue as required by Section 50.4.3.E.2.f.iii of the Montgomery County Subdivision Regulations.

As proposed, the lot design is appropriate for the mixed-use development contemplated for the Subject Property.

***c) The Preliminary Plan provides for required public sites and adequate open areas***

i. ***Master Planned Sites***

The 2017 *Bethesda Downtown Sector Plan* recommends the formation of a linear greenway along the western side of Tilbury Street from Maple Avenue down to Cheltenham Drive linking Cheltenham Park, Chase Avenue Urban Park, and a proposed new park on Maple Avenue which is currently County Parking Lot #25. This Eastern Greenway is envisioned to provide additional open space to the area and buffer the higher-density development along Wisconsin Avenue from the East Bethesda neighborhood. The parcels adjacent to and within this future space were rezoned to increase their development potential, as the Eastern Greenway is envisioned to be created through the redevelopment of these parcels. The Sector Plan and Design Guidelines describe how development adjacent to the Eastern Greenway should be oriented towards the open space and the type of uses on the ground floor should activate the space through placement of ground floor retail and/or residential unit entryways. To enhance compatibility with the adjacent residential neighborhood, the Sector Plan calls for the Eastern Greenway width to be equal to the amount of building height proposed.

The Subject Property is located on a block where the Eastern Greenway is to be located. The Applicant has embraced the Eastern Greenway within the Proposal by providing a swath of land 70 feet in width along the eastern portion of the block through a public access easement. The greenway is conceptually shown on the plans with landscaping and weaving pathways. Parks Staff has created a framework for the entire Eastern Greenway which the Applicant and Staff have been coordinating to realize on this portion of the Greenway. A set of design performance criteria has been created and outlined in Sketch Plan Condition 8, with the final design to be determined at the time of Site Plan.

d) ***The Lot(s) and Use comply with the basic requirements of Chapter 59***

As demonstrated in Sketch Plan No. 320210050 Data Table, the Application complies with the basic requirements of Chapter 59 for CR and CRT optional method development.

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

a) ***Land Use***

The Project substantially conforms to the recommendations for the Property included in the 2017 *Bethesda Downtown Sector Plan*. Specifically, this Sector Plan builds on the past successes of Downtown Bethesda to create a truly sustainable downtown by focusing on components that will bolster the elements most in need of enhancement. The recommendations increase:

**Parks and open spaces**, including new civic greens at Veteran's Park, Bethesda Farm Women's Cooperative Market, Capital Crescent Trail and new



urban parks, pathways and gateways. Many of these parks on the eastern edge are to be connected through the creation of the Eastern Greenway.

**Affordable housing**, including the preservation of existing market-rate affordable housing, providing a mix of housing options and the provision of Moderately Priced Dwelling Units in exchange for development incentives.

**Environmental innovation**, including more energy-efficient buildings, better stormwater management, improved sidewalks and bicycle routes, and other measures to enhance community health and quality of life.

**Economic competitiveness**, based on new development, public amenities and proximity to public transit to attract businesses and visitors from throughout the region, and foster entrepreneurship and innovation.

The Property is within the Wisconsin Avenue and Eastern Greenway District. The Property is designated as site 92 on page 101 of the Sector Plan and 208, 209 & 210 on page 134 of the Sector Plan. The Eastern Greenway District is split into two sections, north and south of East West Highway. The Property is in the northern district which is characterized by low-density, primarily residential development, green open spaces and paved parking lots which provides a transitional area between the commercial structures of the Central Business District (CBD) along the Wisconsin Avenue Corridor and the single-unit houses of East Bethesda. Located also within the northern portion of the Wisconsin Avenue district, it is characterized by older commercial buildings along Wisconsin Avenue. The Sector Plan sees this area as stable transitional uses. Specifically, the Project addresses the following goals as outlined in the Overarching Goals and the Eastern Greenway District sections of the Sector Plan:

- *Ensure the stability of the land uses in the transitional area to preserve East Bethesda and the Town of Chevy Chase as single unit residential neighborhoods*

The Proposal will provide an entire block of redevelopment, focusing ground floor retail with taller building heights along Wisconsin Avenue and transitioning the multifamily building to lower heights facing the single-family neighborhood of East Bethesda. As proposed, the project will provide a 70-foot setback along Tilbury Street for the Eastern Greenway which supports a compatible transition from the new building to the single unit residential neighborhood of East Bethesda.

- *Make the best use of land near the Bethesda Metrorail Station and future Purple Line station by promoting redevelopment of underutilized properties and private surface parking lots.*

The Proposal will replace 1-2 story commercial with associated surface parking and single-family dwellings, into a mixed-use redevelopment with dedicated open space proximate to the Bethesda Metro Station and future Bus Rapid Transit lines.

- *Provide a compatible transition between higher-density development along Wisconsin Avenue and the East Bethesda and Town of Chevy Chase*

The development has a large building footprint, covering the majority of the block with long facades along Highland and West Virginia Avenues. The Proposal will focus the taller building heights with ground floor retail along the Wisconsin Avenue corridor, while appropriately decreasing the building height towards Tilbury Street. The conceptual architectural approach provides many opportunities to break down the massing along the longer side streets. Importantly, the proposed 70-foot-wide Eastern Greenway along Tilbury Street provides a critical dimension of relief as the block transitions to East Bethesda.

- *Provide a green connector and a transition along the eastern edge of the Sector Plan area.*

The 2017 *Bethesda Downtown Sector Plan* recommends the formation of a linear greenway along the western side of Tilbury Street from Maple Avenue down to Cheltenham Drive linking Cheltenham Park, Chase Avenue Urban Park, and a proposed new park on Maple Avenue which is currently County Parking Lot #25. This Eastern Greenway is envisioned to provide additional open space to the area and buffer the higher-density development along Wisconsin Avenue from the East Bethesda neighborhood. The parcels adjacent to and within this future space were rezoned to increase their development potential, as the Eastern Greenway is envisioned to be created through the redevelopment of these parcels. The Sector Plan and Design Guidelines describe how development adjacent to the Eastern Greenway should be oriented towards the open space and the type of uses on the ground floor should activate the space through placement of ground floor retail and/or residential unit entryways. To enhance compatibility with the adjacent residential neighborhood, the Sector Plan calls for the Eastern Greenway width to be equal to the amount of building height proposed.

The Subject Property is located on a block where the Eastern Greenway is to be located. The Applicant has embraced the Eastern Greenway within the Proposal by providing a swath of land 70' in width along the eastern portion of the block. The greenway is conceptually shown on the plans with landscaping and weaving pathways. Parks Staff has created a framework for the entire Eastern Greenway which the Applicant and Staff have been coordinating to realize on this portion of the Greenway. As outlined in Sketch Plan Condition 8, the Applicant must design and construct this space, with further details to be determined at Site Plan in coordination with Park and Planning Staff.

#### ***b) Environment***

This project is located within the areas identified in the Sector Plan as the Wisconsin Avenue Corridor and Eastern Greenway Districts. The Sector Plan specifically recommends part of the Subject Property, identified as Map #210, be rezoned in order to facilitate the eastern greenway. Pursuant to this recommendation, the Applicant has incorporated a 70-foot greenway along the easternmost portion of the Site in order to contribute to the planned Eastern Greenway green connector in Downtown Bethesda.

The specific environmental goals of the Sector Plan contain recommendations to reduce urban heat island, improve air quality and carbon sequestration, increase tree canopy, and improve ecological biodiversity. Through the implementation of the Eastern Greenway, which will be populated with canopy trees, as well as the proposal for an 8-inch green roof designed to provide 35% green cover on site the Applicant has demonstrated commitment to meeting the urban green goals identified in the Sector Plan.

Additionally, the Applicant anticipates incorporating a masonry façade with punch windows in order to address the Bird Safe Design recommendations of the Sector Plan; such design details will serve to reduce reflections and glare which may be harmful to urban wildlife in the area.

### *c) Transportation*

The Application is consistent with the above recommendations and will provide the necessary right-of-way dedications and streetscape improvements. The 2017 *Bethesda Downtown Sector Plan* recommends the following along property frontages:

1. A dedication of the Wisconsin Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 122-foot-wide right-of-way.
2. A dedication of the Highland Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.
3. A dedication of the West Virginia Avenue frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.
4. A dedication of the Tilbury Street frontage between the Subject Property line and right-of-way centerline to provide the Sector Plan-recommended total 60-foot-wide right-of-way.

### *Sector-Planned Transportation Demand Management*

This Project is located in the Bethesda Downtown Sector Plan area, which is in the Red Subdivision Staging Policy Area. The Project proposes to develop approximately 375,000 gross square feet (gsf). A new development in a Red Policy Area with more than 40,000 gsf must submit a Project-Based Level 3 Results Plan. A Project-based TDM Results Plan requires a commitment by the owner or applicant to achieve a base NADMS that is 5% higher than the District's goal as well as related commuting goals at that project. The Plan must be submitted and approved by MCDOT before issuance of any building permit from DPS.

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

***a) Roads and other Transportation Facilities***

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

***i. Existing Facilities***

The existing development is served by a several driveways along all four (4) site frontages, including a public alley, to provide vehicular access to the existing 20 properties on the block. All frontages have concrete sidewalks of varying widths and states of repair. The immediate area is well served by transit that includes the Red Line Bethesda Metrorail Station (located within ¼ mile of the site), Metrobus, RideOn, the Bethesda Circulator and future Purple Line and BRT route along MD 355.

***ii. Proposed public transportation infrastructure***

Vehicular access to the Site will be provided from Highland Avenue and West Virginia Avenue. Access to the parking garage and a porte cochere with a one-way eastbound operation will be located on Highland Avenue. The consolidated driveway for loading and trash collection will be located on West Virginia Avenue. The Project will construct the Bethesda streetscape on all four (4) frontages. Ample space will be reserved on Wisconsin Avenue for the potential installation of a future BRT station along the southern half of the Wisconsin Avenue frontage. Each of these improvements will improve access, mobility, and pedestrian safety. Pedestrian access to the site will be from the surrounding sidewalk network and will be enhanced by streetscape improvements along each of the Property frontages, consistent with the Bethesda Streetscape Standards.

***iii. Proposed private transportation infrastructure***

The finding does not apply because the Applicant does not propose to build any private roadways or transportation infrastructure with the Project.

***b) Local Area Transportation Review (LATR)***

A Transportation Impact Study (TIS) was submitted for the Subject Application on December 20, 2020 and was therefore subject to the 2016-2020 *Subdivision Staging Policy*. The TIS was reviewed by Planning, MCDOT, and MDOT SHA staff per the 2017 LATR Guidelines, and was ultimately approved by all reviewing agencies. A summary of the findings of the study is included below.

The Project is estimated to generate 52 net new morning peak-hour person trips (32 vehicle trips) and 123 net new evening peak-hour person trips (67 vehicle trips). As the

estimated number of peak hour trips for the Project was greater than 50, the Applicant submitted a TIS, as previously stated. The Site is not estimated to generate more than 50 peak hour pedestrian, bicycle, or transit trips, and is therefore exempt from adequacy tests associated with those modes of transportation. The estimated peak-hour trip generation for the Site as proposed is summarized in the tables below.

**Table 3: Trip Generation Estimate**

Land Use		ITE Trip Generation		Policy Area Adjustment		Total Person Trips	
		AM	PM	AM	PM	AM	PM
	Floor Area/ Units						
<b>Existing</b>							
Office	13,057 SF	39	16	25	10	52	21
Retail	13,404 SF	13	123	8	75	18	170
Restaurant	4,256 SF	42	42	26	26	59	59
Single-family Dwelling unit	4 units	3	5	6	4	12	8
	<b>Subtotal</b>	102	186	65	115	141	258
<b>Proposed</b>							
High-rise Apartments	350 units	111	128	88	101	173	198
Retail	15,000 SF	14	133	9	81	20	183
	<b>Subtotal</b>	125	261	97	182	193	381
	<b>Net New</b>	23	75	32	67	<b>52</b>	<b>123</b>

Source: Wells & Associates Transportation Impact Study, dated December 20, 2020.

**Table 4: Net New Trips by Travel Mode<sup>1</sup>**

	Auto Driver	Transit	Bicycle	Pedestrian <sup>2</sup>	Total Person
<b>AM</b>	32	1	4	5	52
<b>PM</b>	67	12	17	29	123

Source: Wells & Associates Transportation Impact Study, dated December 20, 2020.

<sup>1</sup>Due to the calculations of pedestrian trips and auto-passenger trips, the total person trips shown in the table is a higher value than the sum of the travel modes.

<sup>2</sup>Pedestrian trips represents the sum of transit trips and non-motorized trips, in compliance with the 2017 LATR Guidelines.

#### **Vehicle Adequacy**

The number of vehicle trips estimated to be generated by the project in the peak hour is fewer than 250 and therefore the Applicant was required to study a minimum of four (4) intersections, one from each direction of the Site access. In coordination with MCDOT, SHA and Planning staff, the Applicant evaluated a total of nine (9) intersections, including the proposed site driveways:

1. Wisconsin Avenue (MD 355) / Norfolk Avenue
2. Wisconsin Avenue (MD 355) / West Virginia Avenue
3. West Virginia Avenue / Tilbury Street
4. Highland Avenue / Tilbury Street
5. Wisconsin Avenue (MD 355) / Cordell Avenue
6. Wisconsin Avenue (MD 355) / Highland Avenue
7. Wisconsin Avenue (MD 355) / Battery Lane
8. Site Driveway Access
9. Wisconsin Avenue (MD 355) / Chase Avenue



*Figure 13 – Map of Nine (9) Intersections Studied*

Per the LATR Guidelines and as accepted by Staff, network delay analysis was evaluated for the intersections located along Wisconsin Avenue.

The Site is in the Bethesda CBD Policy Area, which is designated as a Red Policy Area by the 2016-2020 Subdivision Staging Policy. Traffic congestion in Red Policy Areas is measured using Highway Capacity Manual (HCM) delay-based level of service standards, which applies to all signalized study intersections. The HCM average vehicle delay standard for the Bethesda CBD Policy Area is 120 seconds. Transportation Impact Studies must evaluate three (3) scenarios for the morning and evening peak hours: existing conditions, background (includes approved but unbuilt development) and total future (adding the estimated trips from the proposed project to the background scenario). Motor vehicle mitigation is required for projects that are

forecasted to exceed the average vehicle delay standard at any of the study intersections. For those intersections where the net new trips generated by the project causes the intersection to exceed the average vehicle delay standard, the Applicant must identify and participate in mitigation that will return the average vehicle delay below the average vehicle delay standard. In cases where an intersection exceeds the average vehicle delay standard in the current condition or is forecasted to exceed the average vehicle delay standard in the background condition, Applicants are required to mitigate back to the forecasted average vehicle delay of the background condition or lower. In other words, the Projects are required to mitigate their contribution to the average vehicle delay.

*Table 5: Corridor and Intersection Capacity Analysis*

Intersection	Congestion Standard	Existing		Background		Total Future	
		AM	PM	AM	PM	AM	PM
1. Wisconsin Avenue Corridor	120 sec.	10.0	10.0	13.0	13.0	<b>13.0</b>	<b>13.0</b>
3. West Virginia Avenue / Tilbury Street	120 sec.	7.9	7.9	7.9	7.9	<b>8.0</b>	<b>8.0</b>
4. Highland Avenue / Tilbury Street	120 sec.	7.8	8.0	7.8	8.0	<b>7.8</b>	<b>8.1</b>
8. Site Driveway Access	120 sec.	N/A Not existing driveway				<b>4.6</b>	<b>5.2</b>

Source: Wells & Associates Transportation Impact Study, dated December 20, 2020.

The Wisconsin Avenue (MD 355) corridor within the study area and the isolated study intersections of Tilbury Street / West Virginia Avenue, Tilbury Street / Highland Avenue, and the Site Driveway / Highland Avenue are expected to operate within the Bethesda CBD Policy Area congestion standard (120 seconds of average vehicle delay) during the weekday morning and evening peak hours in total future condition. Therefore, no mitigation is required to satisfy the LATR analysis of the Project.

***c) Other Public Facilities and Services***

**Schools**

The Application is subject to the FY23 Annual School Test.

The Project is served by Bethesda ES, Westland MS and Bethesda-Chevy Chase HS. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:



*Table 6: Applicable FY2023 School Adequacy.*

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Bethesda ES	560	594	106.1%	-34	No UPP	51	78	162
Westland MS	1,105	782	70.8%	+323	No UPP	449	544	710
Bethesda-Chevy Chase HS	2,457	2,356	95.9%	+101	No UPP	281	593	961

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, Bethesda ES and Westland MS and Bethesda-Chevy Chase HS do not require any UPP as identified in Table 1. If the project is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

With a net of 350 multifamily high-rise units that are not age-restricted, the proposed project is estimated to generate the following number of students based on the subject property's location within an Infill Impact Area:

*Table 7: 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	0.195	0.000	0.096	0.000	0.139	0.000
SF Attached	0	0.166	0.000	0.091	0.000	0.116	0.000
MF Low-rise	0	0.059	0.000	0.023	0.000	0.032	0.000
MF High-rise	350	0.034	11.900	0.015	5.250	0.016	5.600
<b>TOTALS</b>	<b>350</b>		<b>11</b>		<b>5</b>		<b>5</b>

As shown in Table 6, on average, this project is estimated to generate 11 elementary school students, 5 middle school students and 5 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 5, therefore no additional UPPs are required and neither are partial payments across multiple UPP tiers.

**4. All Forest Conservation Law, Chapter 22A requirements are satisfied.**

The Applicant has submitted a Preliminary Forest Conservation Plan with this Application. The Forest Conservation Worksheet shows a calculated afforestation requirement of 0.28 acres associated with the Application due to the tract area,

associated offsite work, and the mixed- use designation of the project. This afforestation requirement is anticipated to be met via fee-in-lieu.

**Forest Conservation Variance**

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings of Section 22A-21 of the County Forest Conservation Law. The Law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75% of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Application includes disturbance/removal of trees that are  $\geq$  30 inches DBH, therefore a variance is required. The Applicant submitted a variance request dated September 26, 2022 for impacts to three protected trees and the proposed removal of three protected trees that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

***Table 8: Trees to be Removed***

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
T-1	Red Maple	43"	47%	Fair	REMOVE
T-2	White Mulberry	30"	75%	Fair	REMOVE
T-3	White Mulberry	34"	75%	Fair	REMOVE

***Table 9: Trees to be Impacted but Retained***

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
T-7	Silver Maple	30"	2%	Fair	SAVE
T-11	Tulip Poplar	36"	18%	Fair	SAVE
T-12	Silver Maple	33"	21%	Fair-Poor	SAVE



*Figure 14 – Specimen Tree Impacts and Removals*

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, the Planning Board has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship because:

The impacts to variance trees are necessary for the implementation of a Sector Plan recommended Eastern Greenway in this location. Any level of disturbance within the Subject Property would impact the critical root zones of the subject trees; further, the realization of an immersive and enjoyable green space requires extensive grading and disturbance given that the location for the proposed greenway presently exists as single-family lots. In order to incorporate the development program, demolition of the existing structures is required, which in turn necessitates impacts and removals to variance trees. As conditioned, the proposed layout, which has been coordinated between the Applicant and MNCPPC Staff, will minimize CRZ impacts to existing specimen trees where possible. Further, the Applicant will coordinate with the MNCPPC Forest Conservation Inspector to utilize specialized construction techniques,

provide tree protection, and minimize the limits of disturbance as feasible in the field. Based on the existing circumstances and conditions on the Property, the Planning Board has determined there is an unwarranted hardship.

**a) Variance Findings**

The following determinations are based on the required findings for granting of the requested variance:

- i. ***Will not confer on the applicant a special privilege that would be denied to other applicants.***

The Applicant's proposal is to demolish the existing structures, construct a mixed-use development, which includes multi-family dwelling units (15% MPDUs) with structured parking and ground floor commercial uses, and provide a Sector-Planned greenway. This proposal will provide much needed housing while also increasing parks/open space and environmental innovation in this urban area. With these factors considered, the Planning Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

- ii. ***Is not based on conditions or circumstances which are the result of the actions by the applicant.***

As stated above, the requested variance and associated tree impacts are due to the concerns related to the existing layout of the Subject Properties in relation to specimen trees onsite and on the Site's perimeter. Bringing the Eastern Greenway to fruition while also constructing a new multi-family mixed use building necessitates variance tree impacts. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees where possible. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

- iii. ***Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

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

- iv. ***Will not violate State water quality standards or cause measurable degradation in water quality.***

The proposed greenway, which includes lawn, landscape plantings of shrubs and trees in addition to canopy tree mitigation plantings will help maximize the permeability of the soil, which serves to reduce runoff. The planting of these trees will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. As part of this proposal, the Applicant must also meet the 35% green cover

requirements of the Sector Plan which will provide further water capture. Additionally, the Subject Property does not currently contain any stormwater management features while the Applicant proposes a development that will meet current State and local stormwater management standards; this has to be verified by the approval of a Stormwater Management Plan with the Department of Permitting Services. A measurable degradation in water quality is not anticipated as the development will provide Best Management Practices (BMP) areas to meet environmental site design (ESD) requirements for the Site in order to achieve water quality standards. This Application reduces impervious surfaces and implements areas of green roof and landscape plantings within the design. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

Mitigation for Trees Subject to the Variance Provisions

There are three subject trees proposed for removal in association with this Application. Planting mitigation for the removal should be at a rate that approximates the form and function of the trees removed, at a ratio of approximately 1-inch DBH for every 4 inches DBH removed, using trees that are a minimum of 3-inch caliper. As a result of the proposed removal of three subject trees, for a total of 107 inches DBH removed, which results in a mitigation requirement of at 27 caliper inches of native canopy trees sized at least 3 caliper inches each. As conditioned, this Application will satisfy the variance mitigation planting requirements with final location of the plantings within the Greenway to be determined at Site Plan.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance from the Forest Conservation Law to impact, but retain, three protected trees and to remove three protected trees associated with the Application.

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

The Project must comply with the requirements of Chapter 19 of the Montgomery County Code for stormwater management. The Montgomery County Department of Permitting Services Stormwater Management Section approved the stormwater management concept plan for this project on December 3, 2021. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of micro-bioretenion and green roofs. Additionally, this Application has been granted a waiver in lieu of on-site management for the volume not able to be treated in Environmental Site Design measures. With this approval, the Applicant will meet all applicable requirements of Chapter 19 of the Montgomery County Code.

***6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory***

***and located within the subdivision boundary is approved under Subsection 50-4.3.M.***

This finding is not applicable to this Property.

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

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 3 years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that before the expiration 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 must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 08 2023 (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 the motion of Commissioner Piñero, seconded by Commissioner Branson, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, February 2, 2023, in Wheaton, Maryland and via video conference.

  
\_\_\_\_\_  
Jeffrey Zyontz, Chair  
Montgomery County Planning Board

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No. 320210050 and Preliminary Plan  
No. 120210140