

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

FEB 17 2023

MCPB No. 23-004
Preliminary Plan Amendment No. 11998092C
Rock Spring Centre
Date of Hearing: January 26, 2023

RESOLUTION

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

WHEREAS, on October 25, 1999, the Planning Board approved Preliminary Plan No. 119980920, for 637,200 SF of office, 220,000 SF of retail, 90,000 SF of entertainment use, a 30,000 SF community center¹, and 1,250 multi-family dwelling units on 53.4 acres of land in the Mixed-Use Plan Development (MXPD) zone, located in the northwest quadrant of the Old Georgetown Road (MD 187) and Rock Spring Drive intersection ("Subject Property"), in the 1992 North Bethesda-Garrett Park Master Plan area; and

WHEREAS, on November 9, 2004, the Planning Board approved an amendment to Preliminary Plan No. 11998092A to add a 200-room hotel and reduce the general office space to 539,900 SF² on the Subject Property; and

WHEREAS, on March 30, 2011, the Planning Board approved an amendment to Preliminary Plan No. 11998092B (MCPB 11-15) to reconfigure internal parcel lines within the unplatted existing parcel, creating 21 parcels, and amend the approved land uses by increasing the office space by 10,000 square feet to 549,900 square feet and reducing the retail space by 10,000 square feet to 210,000 square feet on the Subject Property; and

WHEREAS, on March 27, 2019, Floyd E. Davis Company and Rock Spring Properties ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to reconfigure and combine previously approved

¹ The resolution counted the entertainment use and the community center as part of the retail, resulting in a total of 340,000 square feet of retail.

² Incorrectly stated as 537,900 square feet in the resolution

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Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

lots, parcels, and private roads into 25 lots and parcels, extend the Adequate Public Facilities (APF) validity for a maximum density of up to 1,250 multi-family dwelling units (including 386 existing units to be retained on Parcel 22), 549,900 square feet of office use, 210,000 square feet of retail use, a 200-room hotel, a 30,000 square foot community center, and 90,000 square feet of entertainment uses; and to allow the abandonment of Parcel M on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 11998092C, Rock Spring Centre ("Preliminary Plan," "Amendment," 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 Hill, seconded by Vice Chair Presley, 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 Amendment No. 11998092C to reconfigure and combine previously approved lots, parcels, and private roads into 25 lots and parcels, extend the Adequate Public Facilities (APF) validity for a maximum density of up to 1,250 multi-family dwelling units (including 386 existing units to be retained on Parcel 22), 549,900 square feet of office use, 210,000 square feet of retail use, a 200-room hotel, a 30,000 square foot community center, and 90,000 square feet of entertainment uses; and to allow the abandonment of Parcel M subject to the following conditions, which supercede all prior conditions of approval:³

General Approval

1. This Preliminary Plan is limited to 25 lots and parcels for 1,250 multi-family dwelling units (including 386 existing units to be retained on Parcel 22), 549,900 square feet of office use, 210,000 square feet of retail use, a 200-room hotel, a 30,000 square foot community center, and 90,000 square feet of entertainment uses, private roads, open space, and stormwater management.

³ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities (“APF”) review for the Preliminary Plan is hereby extended and will remain valid as follows:
 - a) Within five (5) years of the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5) of this Preliminary Plan Amendment, the Applicant must obtain building permits for all buildings in Phase 3A, as shown on Certified Site Plan 82009003A, unless an extension is obtained.
 - b) Within seven (7) years of the initiation date of this Preliminary Plan Amendment, the Applicant must obtain building permits for all buildings in Phase 3B as shown on the Certified Site Plan 82009003A, unless an extension is obtained.
 - c) By November 25, 2033, the Applicant must obtain building permits for all remaining development in the Preliminary Plan. If the Applicant fails to comply with the deadline in this condition, the APF Preliminary Plan approval is revoked for that portion of the Subject Property that has not obtained building permits.

Plan Validity Period

3. The Preliminary Plan will remain valid for five 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. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated December 27, 2022, 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 MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recordation of any plat(s) for Phase 3 (Site Plan Amendment No. 82009003A), the Applicant must satisfy MCDOT’s requirements for access and improvements associated with the Phase 3 (Site Plan Amendment No. 82009003A) development. No bonding is required for Rockledge Drive improvements at this time, but improvements and the need for additional right-of-way dedication along Rockledge Drive will be determined at a future site plan.
6. Before the issuance of access permits for a particular phase, the Applicant must satisfy the Maryland State Highway Administration’s (“MDOT SHA”)

requirements for access and improvements associated with that phase of development.

7. 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 October 18, 2022, 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.
8. 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 17, 2022, 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.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA"), in its letter dated September 19, 2022, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations provided in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

10. The Applicant must comply with binding elements of County Council Resolution No. 13-865, approving Local Map Amendment No. G-713, amended by County Council Resolution No. 13-1442 approving Development Plan Amendment No. DPA 99-1, as may be amended.

Future Site Plan Approval Required

11. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of Site Plan No. 82009003A, except for work related to the relocation of the Estate House which may proceed earlier under a separate Sediment Control Permit that will allow for the house relocation and placement in its ultimate location. 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.
12. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities

shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan amendment.

Parks

13. Before the issuance of the use and occupancy certificate for the 180th residential dwelling unit in Phase 3B, the Applicant must 1) contribute \$700,000, adjusted for inflation based on the Core CPI, for Field and Parking Lot Lighting improvements, or other improvements as determined by the M-NCPPC Montgomery Parks Department ("MCParks"), at Cabin John Regional Park; or 2) furnish and install Field and Parking Lot lighting for one field and the existing parking lot under an MCParks Park Permit.
14. Before the final use and occupancy certificate for the first residential building in Phase 4, the Applicant must 1) contribute an additional \$700,000, adjusted for inflation based on the Core CPI, for Field and Parking Lot lighting improvements, or other improvements as determined by MCParks, at Cabin John Regional Park; or 2) furnish and install lighting for one field and additional parking lot related lighting at Cabin John Regional Park under an MCParks Park Permit.
15. Before issuance of the final use and occupancy certificate for the second residential building in Phase 4, the Applicant must 1) make the final, third remaining \$700,000 contribution, adjusted for inflation based on the Core CPI, for Field and Parking Lot lighting improvements, or other improvements as determined by MCParks, at Cabin John Regional Park; or 2) furnish and install lighting for one field at Cabin John Regional Park under an MCParks Park Permit.
16. If MCParks has installed the Field and Parking lot lighting improvements at Cabin John Regional Park prior to issuance of any of the Use and Occupancy Permits listed in Condition Nos. 13, 14 or 15, the Applicant must reimburse MCParks for the actual cost incurred for such improvements or make a contribution up to the amount required by Condition Nos. 13, 14, and 15, whichever is less, for other improvements at Cabin John Regional Park, as determined by MCParks, as required for each phase trigger listed in Condition Nos. 13, 14 and 15 above.

Forest Conservation

17. Before recordation of the plat and the start of any demolition, clearing, grading, or construction (except for work associated with the relocation of the existing Estate House), whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office

of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.

18. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling at least 83 caliper inches. Planting locations to be shown on the Final Forest Conservation Plan ("FFCP").
19. Applicant must submit a Final Forest Conservation Plan ("FFCP") for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
20. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

Transportation

Frontage Improvements

21. The Applicant must provide dedication and show on the record plat(s) all land necessary to accommodate eighty (80) feet from the centerline for Rock Spring Drive, in addition to the right-of-way required for the transit station as shown on the Preliminary Plan.
22. Before recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a six-foot-wide sidewalk and a 10-foot-wide asphalt separated bike lane along the Property frontage on Rock Spring Drive.
23. The Rockledge Drive frontage improvements will be determined at the future Phase 4 Preliminary or Site Plan.
24. Before recordation of plats, the Applicant must satisfy all necessary requirements of MDOT SHA to ensure construction of a 10-foot-wide sidewalk with a six-foot buffer along the Property frontage on Old Georgetown Road.
25. The Applicant must participate in the implementation of the Rock Spring Drive road diet. The extent and manner of participation will be determined by MCDOT and MCDPS – Right-of Way Permitting and Plan Review Section (RPP) before certification of any Site Plan associated with Phase 4 of the Subject Property.

Private Roads

26. The Applicant must provide all Private Roads shown on the Certified Site Plan including any sidewalks, bikeways, storm drainage facilities, street

trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:

- a) If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel. If there are structures above or below the Private Road, the record plat must clearly delineate the Private Road and include a metes and bounds description of the boundaries of the Private Road.
- b) The Private Road 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 building permit for a particular phase, (not including permits for work related to the relocation of the Estate House), 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 applicable 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.

Record Plats and Easements

27. Record Plats may be recorded before the Phase 4 Site Plan approval; however:
- a) Replatting will be required if a subsequent Site Plan modifies a lot line; and
 - b) Before issuance of any building permit, the Applicant must obtain approval of a Certified Site Plan.
28. There shall be no clearing or grading of the site before recordation of plat(s), except for work related to the relocation of the Estate House.
29. The record plat must show necessary easements.

Certified Preliminary Plan

30. 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.
31. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a) Show resolutions and approval letters on the certified set.
 - b) Eliminate the curb cut along Rock Spring Drive into the parking garage on Parcel Q.
 - c) On the west side of Stone Spring Street, north of Stone Gate Lane, show a minimum six-foot-wide sidewalk with a minimum two-foot-wide buffer, three-foot wide preferred.
 - d) Change the “cycletrack” labels to “separated bike lane.”

- e) On Sheet PP-1, show the proposed dedication along Rock Spring Drive and update the tract area calculation.
- f) On Sheet PP-9, make the following changes to the Rock Spring Drive cross-sections:
 - i) On the top cross-section, replace “Interim Road- cross Section” with “Phase 3 cross section (no road diet).”
 - ii) Remove the middle cross section.
 - iii) On the bottom cross-section, replace “Ultimate Section with BRT no road diet” with “Conceptual Ultimate Section (Road diet/BRT in dedicated lanes).”
- g) Include a phasing exhibit that shows all phases.

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, orientation and density of lots, and location and design of roads is appropriate for the subdivision. The length, width, and shape of all blocks are compatible with existing development patterns and land use goals for the Property. The private roads will provide efficient circulation through the Property, and the design details will establish the character of the neighborhood. The subdivision has been designed to emphasize walkability, sustainability, and efficient circulation.

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

The compact block design creates a logical grid pattern of internal streets on the southern portion of the Property and promotes the pedestrian realm throughout future phases of mixed-use development on the Property.

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

The lots allow a dense, mixed-used environment to evolve around the environmental features of the Property. The lot design allows most buildings to be pulled close to the street, enhancing the pedestrian realm and creating a place where people want to linger.

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

The Preliminary Plan retains, with slight modifications, the existing six-acre (approximately) forest conservation easement area in the middle of the Property and includes a 0.58-acre urban park. In addition, the Overall Project addresses local recreation needs by increasing capacity at local ball fields through the design and implementation of lighting improvements at Cabin John Park.

Dedication of the area previously held in a transit easement allows implementation of Bus Rapid Transit ("BRT") along Rock Spring Drive. The Preliminary Plan also provides significant upgrades to pedestrian and bicycle mobility in the area with improvements along Property frontages on Rock Spring Drive, Old Georgetown Road and Rockledge Drive.

d) The Lots and Use comply with the basic requirements of Chapter 59

The lots comply with the basic requirements of Chapter 59, from the Zoning Code in Effect on October 29, 2014 as demonstrated in the table below.

*Data Table for MXPB Zone, Section 59-C-7.5
(Zoning Code in Effect on October 29, 2014)/LMA No. G-713, DPA 99-1*

Development Standard	MXPB Zone	LMA G-713/DPA 99-1	Approved
Gross Tract Area (min)	20 acres	53.4 acres	53.40 acres
Prior Dedication	n/a	n/a	2.86 acres
Proposed Dedication	n/a	n/a	0.35 acres
Net Tract Area	n/a	n/a	50.19 acres
Density (max)			
Residential	44 units/acre; 75 dwelling units/acre ¹	1250 units (23.4 units/acre)	1250 units ² (23.4 units/acre)
Nonresidential			
Office	n/a		549,900 sf
Retail	n/a	549,900 sf	210,000 sf
Hotel	n/a	210,000 sf	200 rooms/200,000 sf
Community Center	n/a	200 rooms/200,000 sf	30,000 sf
Entertainment	n/a	30,000 sf	90,000 sf
Total Nonresidential	0.75 FAR	90,000 sf	
		1,079,900 sf (.046 FAR)	1,079,900 sf (.046 FAR)
MPDU requirement (min)	n/a	227 MPDUs (18%)	227 (18%) ³
Green Area (min)	40%/50% ⁴	40%/50% ⁴	40%-50% TBD at Site Plan
Minimum Setbacks (min)	TBD at Site Plan	TBD at Site Plan	TBD at Site Plan

¹ 44 units per acre in an all-residential area or 75 units per acre in a commercial/industrial area.
² 386 units built (to remain) from Phase I and 864 proposed in Phases 2 and 3.
³ 70 MPDUs built with Phase I, 157 to be provided in Phases 2 and 3.
⁴ 40% for commercial industrial areas, 50% for residential areas.

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

All prior approvals on this Property were subject to the 1992 *North Bethesda/Garrett Park Master Plan*, but in this area, the 1992 Master Plan has been superseded by the 2017 *Rock Spring Sector Plan* (Sector Plan or Plan). The Sector Plan recognizes that Rock Spring is well-positioned to become an amenity rich district for existing employers and future residents. The Plan envisions Rock Spring as an employment center that includes new housing with retail nodes at each end of the area's "central spine" along Rock Spring Drive and Fernwood Road to the west of the intersection with Rock Spring Drive. The Property is located at the eastern end of the central spine, at the intersection of Rock Spring Drive and Old Georgetown Road in an area the Sector Plan

designates as Rock Spring East/Village Center. The development is consistent with the overall Sector Plan vision and will provide a gateway into the central spine of Rock Spring with a new mixed-use development that includes a significant amount of retail.

a) Land Use/Design

The development will contribute to the following Sector Plan overall land use and design goals:

- Support future transit and create mixed-use centers that will continue to serve adjacent communities
- Create recognizable activity centers
- Create a network of public open spaces integrated with the emerging community
- Contribute to the mix of uses within the Plan area to complement the existing office uses
- Create compact development patterns that include short blocks and building frontages close to the street

The Project will create a new mixed-use activity center adjacent to a potential BRT stop along the North Bethesda transitway on Rock Spring Drive. The development creates a grid of streets with walkable blocks and the majority of the buildings fronting on both the public roads adjacent to the Property and the private roads internal to the project. Central to the development is a 0.58-acre urban park adjacent to a six-acre forest conservation easement that will be improved with natural surface trails. These open spaces will be readily accessible for the surrounding community and available for public use.

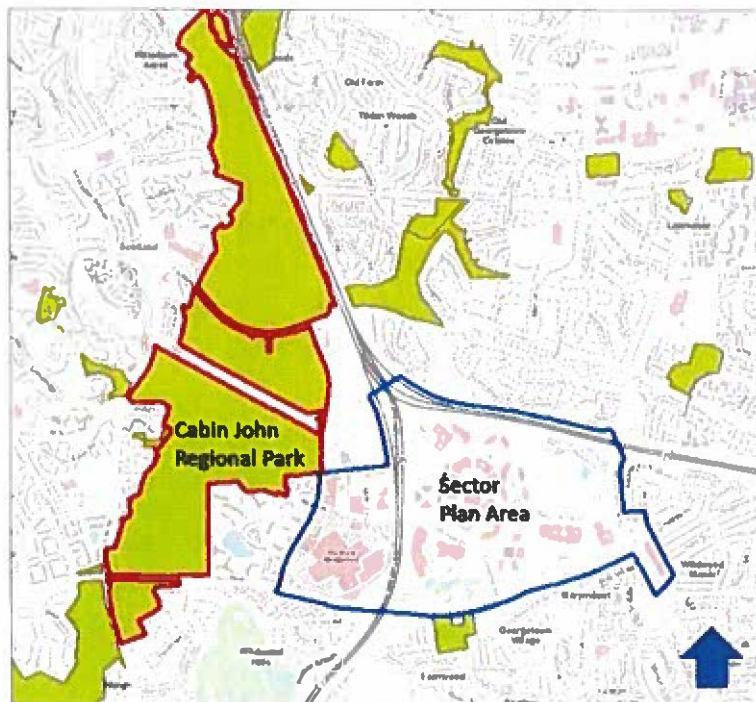
The Sector Plan recognizes the development potential of the Rock Spring Centre property given its size and favorable location. The Plan also acknowledges the history of development projects that have been approved, but have not been constructed, since the Property's rezoning in the mid-1990s and the change and growth that has occurred in the area during the intervening decades. The Plan notes the desire among local citizens for additional community facilities and instructs Planning Staff and the Planning Board to explore the potential for community amenities should the Rock Spring Centre APF expire or the need for amendments arise (Sector Plan pages 31, 59). Community meeting space, athletic fields and a dog park are discussed as possible community amenities, and the Plan discusses the potential to expand the existing publicly owned land (Parcel M from the prior approval) that was previously dedicated for recreational uses (pg. 59).

In consultation with the Department of Recreation, the Applicant will reclaim Parcel M for the Phase 3 development and will provide alternative recreational facilities consistent with the Sector Plan. Staff has worked closely with the Applicant team to explore the potential for recreational spaces onsite and in the surrounding area. The

Applicant will provide three publicly accessible recreation facilities onsite. The urban plaza/park, the six-acre forest conservation area (which will be improved with a natural surface trail and other enhancements), and the dog park. These facilities will be privately-owned and operated by the Applicant, but accessible to the public.

To address the need for additional athletic field space in the area, the Applicant has worked with Planning Staff and the Montgomery Parks Department on an agreement to increase capacity for playing fields at nearby Cabin John Regional Park (CJRP) by designing and implementing a lighting plan for three fields and the associated parking lot. CJRP is just outside of the Sector Plan Area to the west.

Fields Five, Six, and Seven, along with the parking lot that primarily serves them, are not currently at the same standards as the other athletic fields at Cabin John Recreational Park and cannot support the same level of use as the other fields. The primary difference is in the lack of lighting for these sub-par fields. Installing lighting on these fields and the parking lot will substantially increase capacity on those fields and for CJRP as a whole.



Rock Spring Sector Plan area and CJRP outlined in red



Playing fields and parking lot at CJRP that will receive new lighting

The Sector Plan includes design recommendations specific to this Property. The Plan indicates that the Project should:

- Anchor and frame the intersection of Old Georgetown Road and Rock Spring Drive and act as a gateway into the Rock Spring area;
- Create frontages along Old Georgetown Road and Rock Spring Drive; and
- Transition between the higher densities already approved to the potential lower densities on the Georgetown Square property directly to the south (Sector Plan page 32).

The Phase 3A mixed-use building frames the corner of Old Georgetown Road and Rock Spring Drive, anchoring the prominent intersection. The height of the mixed-use buildings along Rock Spring Drive, at a maximum of seven stories/80 feet, provides an appropriate transition between the proposed Phase 2, high-rise residential towers and the low-rise Georgetown Square Shopping Center⁴ and Walter Johnson High School to the south.

b) Environment

The Project addresses the following Sector Plan environmental goals:

- Promote an awareness of environmental issues and instill a commitment to environmental stewardship.

⁴ Georgetown Square Shopping Center is within the CRT-1.5, C-1.0, R-0.75, H-75 Zone and building heights up to 75 feet are allowed.

- Preserve natural areas and features that are environmentally sensitive.
- Encourage green features (softscaping) in required open space areas and the public realm.
- Provide opportunities for healthful exercise, recreation and mental wellbeing: parks and open spaces, trails, sidewalks, and bicycle networks.

The large forest conservation area in the center of the Property protects a stream and other sensitive environmental features and will include natural surface trails for exploration and enjoyment of the Property's natural features. The trails and the buffered sidewalks along the grid of private streets provide connections within the large Property, encouraging pedestrian activity and appreciation of the natural surroundings. The separated bike lanes along the Rock Spring Drive frontage will further expand the bicycle network that is planned for nearby Fernwood Road/Westlake Terrace in connection with recent development approvals.

c) Transportation

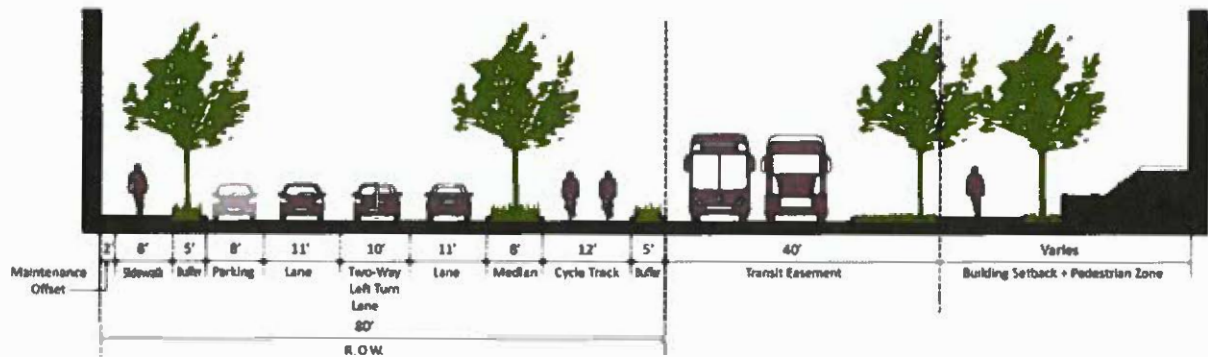
i. Transit

The North Bethesda Transitway is included in the 2013 *Countywide Transit Corridors Functional Master Plan* (Transit Plan) as part of the County's BRT network. Along the Rock Spring central spine of Westlake Terrace, Fernwood Road, and Rock Spring Drive, the transitway is planned to operate in parallel dedicated BRT lanes within a 40-foot transit easement on the north side.

An approximately 40-foot-wide transit easement is currently in place along the Property's Rock Spring Drive frontage, and the Applicant will dedicate the easement area to the County as right-of-way with the Subject Preliminary Plan Amendment. The Transit Plan recommends BRT station locations at Rockledge Drive and Rock Spring Drive, and Rock Spring Drive and Old Georgetown Road along the Property frontage. This Project does not preclude BRT stations at either of these locations.

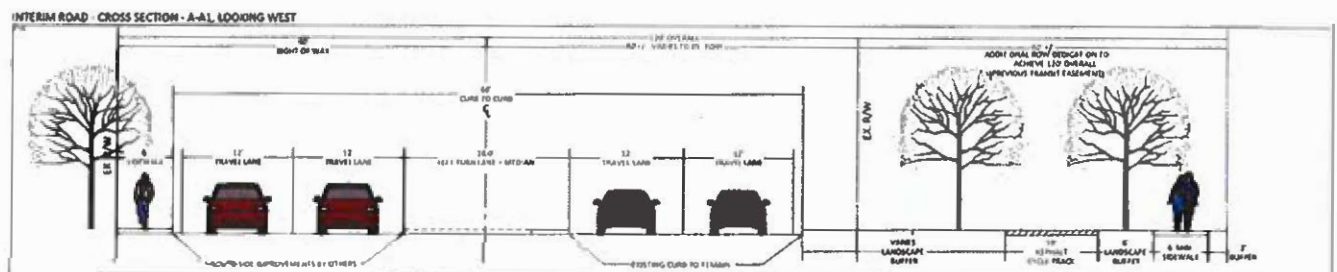
ii. Roads and Bikeways

ROCK SPRING DRIVE: Rock Spring Drive is designated in the Sector Plan as a Business District Street with a minimum 80-foot-wide right-of-way. The Sector Plan recommends that Rock Spring Drive be considered by MCDOT as a test case for a "road diet." The road diet, as envisioned by the Sector Plan, would reduce the four travel lanes to two travel lanes and replace the center left turn lanes with a single two-way left turn lane. Space from the eliminated lanes would be repurposed for a two-way bike "separated bike lane" with landscaped buffers on either side of the bikeway, the transitway and the sidewalks. The 2018 *Bicycle Master Plan* envisions separated bike lanes along the north side of Rock Spring Drive.



***Sector Planned Cross-Section of Rock Spring Drive Road Diet facing west
(figure 19 on page 70 of Sector Plan)***

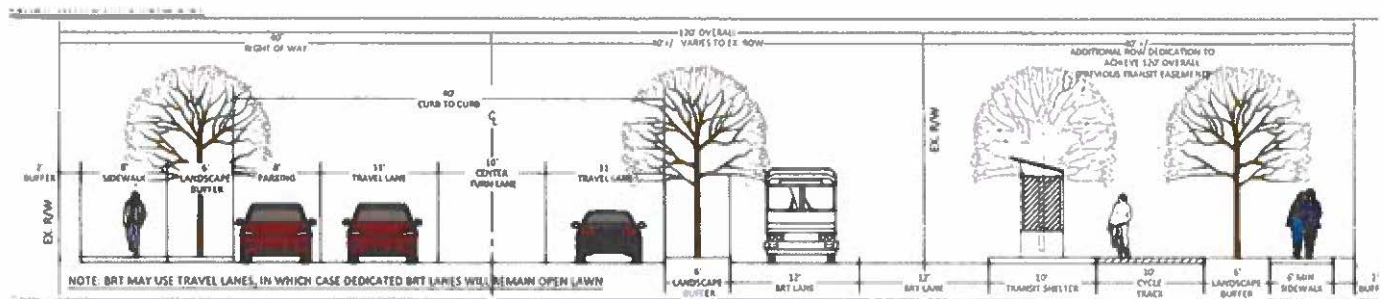
MCDOT and Planning Staff, in consultation with MCPS⁵, discussed the implementation of the road diet and determined that full implementation should be tied to Phase 4 of this project. As a result, all parties agreed on a Phase 3/interim alternative for Rock Spring Drive that converts the existing 40-foot-wide transit easement to right-of-way and constructs a 10-foot-wide asphalt two-way separated bike lane with a buffered six-foot sidewalk along the Property frontage in the ultimate location. In the interim condition, the four travel lanes are maintained, and a median running down the center of the roadway provides space for turn lanes at intersections. The Phase 3/Interim cross-section satisfies the master planned pedestrian and bicycle requirements and does not preclude future implementation of the road diet with dedicated BRT lanes.



Rock Spring Drive Interim/Phase 3 Cross Section (without road diet or BRT)

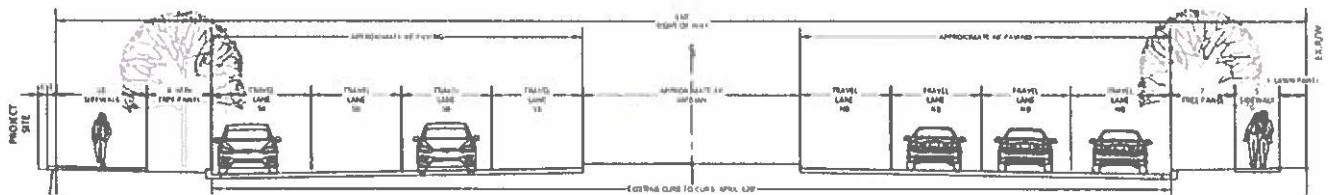
The cross-section below shows the Rock Spring Drive cross section with full implementation of the road diet and BRT traveling in dedicated lanes. Implementation of the road diet will be revisited during review of the Phase 4 Site Plan in coordination with MCDOT and Planning Staff, in consultation with MCPS.

⁵ MCPS was consulted because a road diet would impact the Rock Spring Drive frontage along Walter Johnson High School.



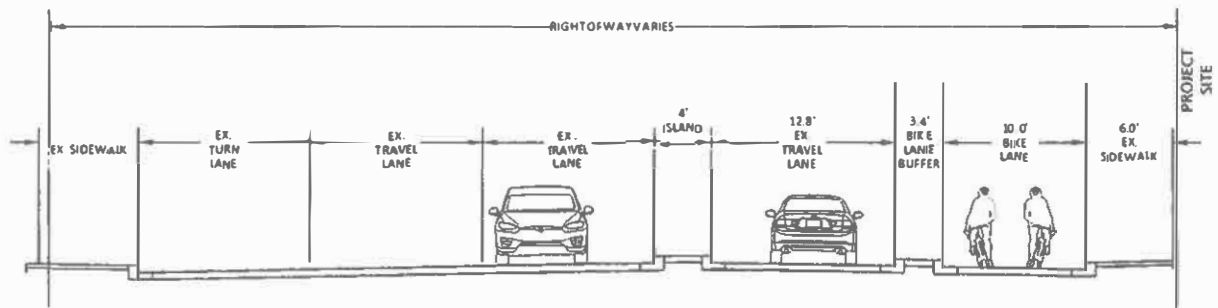
***Rock Spring Drive Conceptual Ultimate Cross Section
(with Road Diet and BRT in dedicated lanes)***

OLD GEORGETOWN ROAD: Old Georgetown Road (MD 187) is a state road designated as a Major Highway in the Sector Plan with a minimum 120-foot right-of-way and six travel lanes. The existing right-of-way is 150 feet, and no further dedication is required. The 2018 *Bicycle Master Plan* requires a separated bike lane along the eastern side of Old Georgetown Road; no facilities are recommended along the Property's Old Georgetown Road frontage. The Applicant will improve this frontage with a 10-foot-wide sidewalk and six-foot street buffer.



Old Georgetown Road Cross Section

ROCKLEDGE DRIVE: Rockledge Drive is designated as a Business District Street with a minimum 80-foot-wide right-of-way. The Sector Plan envisions reducing the number of lanes from four to two to accommodate bicycle facilities. The 2018 *Bicycle Master Plan* recommends separated bike lanes along the Property's Rockledge Drive frontage between Rock Spring Drive and Rock Forest Drive, and a sidepath north of Rock Forest Drive. The Applicant is proposing to remove a vehicle travel lane on the east side of Rockledge Drive, along the Property frontage, between Rock Spring Drive and Rock Forest Drive to accommodate a buffered two-way 10-foot-wide separated bike lane. Final details of the Rockledge Drive road diet and frontage improvements will be determined during a subsequent site plan.



Rockledge Drive Cross Section

The Sector Plan stresses the need for safe pedestrian connections between Walter Johnson High School and the Project (pp. 59, 77). As such, the Applicant will provide a traffic signal and crosswalks at the intersection of Rock Spring Drive and Stone Spring Street with Phase 3A of the development. The signalized intersection will create a safer crossing for students, residents, and shoppers.

The pedestrian and bicycle improvements are in substantial compliance with the Sector Plan, 2013 *Countywide Transit Corridors Functional Master Plan*, and the Urban Design Guidelines for the Rock Spring & White Flint 2 Sector Plans.

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

a) APF Validity Extension

On April 1, 2019, the Applicant submitted a timely request to extend the adequate public facilities (APF) validity period for the Preliminary Plan by 12 years under Section 50-4.3.J.7.e., *Applications with significant infrastructure investment*. The APF extension request was submitted with the Preliminary Plan Amendment application, and the Planning Board granted eight approvals to extend the regulatory review period. The APF validity period would have otherwise expired on November 25, 2021.

The Planning Board approves an extension of the APF validity until November 25, 2033, which is 12 years from the existing November 25, 2021 APF validity expiration date. Under Section 50-4.3.J.7.h, no combination of extensions of APF validity by the Planning Board may exceed a total of 12 years from the date of the original APF expiration. A future Planning Board cannot approve any further extensions, unless the law is changed to allow for such extensions

The APF extension is conditioned on a phasing schedule requiring the Applicant to obtain building permits as follows:

- Building permits for all buildings in Phase 3A must be obtained within 5 years of this approval

- Building permits for all buildings in Phase 3B must be obtained within 7 years of this approval
- All remaining building permits must be obtained by November 25, 2033, or the Preliminary Plan will be revoked for any unbuilt development.

To extend the APF validity for 12 years, the Planning Board made the following findings:

i. ***Requirements for all APF Validity Extensions***

(1) the applicant must not propose any additional development above the amount approved in the original determination;

The Applicant is not proposing development beyond the amount approved under Preliminary Plan No. 11998092B.

(2) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

The Planning Board approved additional public improvements associated with the Preliminary Plan Amendment to address conformance with the Sector Plan, the *Bicycle Master Plan*, and the *Countywide Transit Corridors Functional Master Plan*, but no additional conditions were required for the APF Extension request.

(3) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;

The development approved by this Application will not generate more trips than what was previously approved as part of the Preliminary Plan. The development quantities remain as approved by the prior Preliminary Plan, and the Planning Board did not require the Applicant to submit a new traffic study.

(4) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and

Not applicable to the subject extension request.

(5) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.

Bill 37-20, which took effect on January 1, 2021, amended Chapter 50 to require retesting for school adequacy upon APF extension if unbuilt units are estimated to generate more than 10 students at any single school. However, since the APF extension request submitted with the Preliminary Plan Amendment was accepted for review by the Planning Department prior to January 1, 2021, retesting for school adequacy is not required at this time. If the APF validity expires, or the Applicant requests additional dwelling units, a school adequacy test will be required.

ii. ***Findings required for APF extension of up to 12 years additional years***

(1) the preliminary plan or APF approval for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million, as adjusted annually from February 2017 by the consumer price index, to comply with specified infrastructure conditions;

After accounting for the annual Consumer Price Index (CPI) adjustments since February 2017, the Applicant has expended more than three million dollars to comply with APF related infrastructure conditions. The three-million-dollar requirement, as adjusted annually since February 2017 based on CPI, would require an expenditure in excess of \$3,842,520.⁶

The Applicant has spent \$14,181,482 (without taking advantage of the CPI adjustment factor) on the following improvements:

- **Realignment of Rockledge Drive associated with the construction of the Rockledge Connector:**
 - Construction of Rockledge Connector and related improvements: \$3,849,890
 - Right-of-way dedication for Rockledge Connector and related interchange: \$7,157,940

⁶ Calculation is based on data from the U.S. Bureau of Labor Statistics, the CPI in February 2017 was 2.7%; in February 2018 was 2.2%; in February 2019 was 1.5%; in February 2020 was 2.3%; in February 2021 was 1.7%; in February 2022 was 7.9%; and in November 2022 was 7.1%.

- A signed agreement with MDSHA for (A) funding of I-270 interchange improvements and (B) construction of a segment of the Rockledge Connector:
 - Contribution to Interchange per SHA Agreement: \$1,500,000
- Construction of improvements contiguous to the site along Old Georgetown Road and at the interchange of the I-270 West Spur and Democracy Boulevard:
 - Construction of Old Georgetown Road Improvements: \$579,577
 - Right-of-way dedication for Old Georgetown Road Improvements: \$620,955
- Improvement to the intersection of Old Georgetown Road and Tuckerman Lane:
 - Construction of Improvements at Old Georgetown Road and Tuckerman Lane: \$163,000
 - Construction of Improvements at Rock Spring Drive: \$310,120

(2) the applicant has met or exceeded the required infrastructure conditions during the original validity period; and

As described in the previous finding, the Applicant completed all required infrastructure improvements during the original validity period.

(3) the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.

The public has benefitted for many years from the infrastructure improvements provided well in advance of the majority of the actual development on the Property. A majority of the infrastructure constructed or funded by the Applicant was recommended by the 1992 *North Bethesda/Garrett Park Master Plan* in effect at the time of prior Preliminary Plan approvals, or required by the County Council with the rezoning of the Property.

b) Roads and other Transportation Facilities

i. Public transportation infrastructure

Proposed public transportation infrastructure is discussed in Finding No. 2 and is adequate to support and service the area of the subdivision.

ii. *Private transportation infrastructure*

The Preliminary Plan includes a network of private roads internal to the Property. The approved Preliminary Plan included a similar network of private roads, and the Subject Application realigns the roads to better serve the development program. The Applicant's justification for private roads states that the roads have utilities, grading, stormwater management, structures, lighting, and design details that establish the character of the neighborhood in contrast to the public street standards. The Applicant wants these non-standard items to be built and maintained privately to ensure excellent upkeep and oversight of the design intent.

Per Section 50-4.3.E.4.b, private roads must be built to the construction specifications of the corresponding public road standard. With the exception of Stone Spring Street North, all internal private roads are designed as modified Business District Streets based on MCDOT Standard No. MC-2005.01. Stone Spring Street North is a modified tertiary residential street with a sidewalk on one side (based on MCDOT Standard No. MC-2001.01).

The private roads will be platted in separate parcels and MCDOT has determined that the private roads are not needed to maintain area circulation, provide continuous corridors to serve the general public, and are not needed to be part of the network modeled for area capacity.

The Planning Board approves the classification of internal roads as private. The private roads will effectively function as public roads in the following respects: 1) adequate access and fully accessible to the public; 2) accessible to fire and rescue vehicles; and 3) designed to the minimum public road standards, except for right-of-way and pavement widths, and a portion of a street with a sidewalk only on one side.

c) *Local Area Transportation Review (LATR)*

The Subject Preliminary Plan Amendment includes the same uses and density approved by Preliminary Plan Amendment 11998092B. The trip counts associated with the previously approved development (2,243 peak hour morning trips and 4,341 peak hour evening trips) remain unchanged with this Application, and no further LATR analysis is required.

d) *Schools*

Bill 37-20, which took effect on January 1, 2021, amended Chapter 50 to require retesting for school adequacy upon APF extension if unbuilt units are estimated to generate more than 10 students at any single school. However, since the APF extension request submitted with the Preliminary Plan Amendment was accepted for review by the Planning Department prior to January 1, 2021, retesting for school adequacy is not

required at this time. If the APF validity expires, or if the Applicant requests approval of additional dwelling units in a future Preliminary Plan Amendment, a school adequacy test will be required.

e) Other Public Facilities and Services

The Property is located within water and sewer categories W-1 and S-1 and is serviced by existing water and sewer. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services continue to be adequate as determined by the prior Preliminary Plan approval.

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

a) 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 Amendment complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned and described below. Natural Resource Inventory/Forest Stand Delineation

Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 419941990 was originally approved for this Property on August 9, 1994. It was re-approved on January 28, 1998, and revised June 25, 1999. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. Forest Conservation Plans are required to update the information from the NRI/FSD as needed. The site originally included 25.47 acres of forest. FFCP 820090030, which was approved May 14, 2012, recorded that the site included 25.47 acres of forest, 0.24 acres of wetlands, and 4.15 acres of stream buffers. There are no 100-year floodplains or known occurrences of Rare, Threatened or Endangered species identified either on the original NRI/FSD or on subsequent FFCPs. The FFCP with the current application affirms that the NRI/FSD information is unchanged. The site drains to the Cabin John Creek watershed, which is a Maryland State Use Class I stream. The Property does not lie within a Special Protection Area.

b) Environmental Guidelines

As noted above, portions of this Property were developed under previous plan approvals. The Property contains a variety of features, including forest and meadow areas, an existing homestead, temporary parking lots, completed roadway and parking structures serving residential buildings that have been occupied since approximately 2003, and the foundation for a large apartment tower which has not been completed. Environmentally sensitive features such as steep slopes and environmental buffers occur on-site, and within portions of the current phase. The development envelope has

been conceptually approved during the initial preliminary plan of subdivision and earlier versions of the Final Forest Conservation Plan.

The previous and current plans include permanent encroachments into the stream valley buffer. Mitigation for the permanent impacts is provided by the control of invasive species and the planting of supplemental native species throughout the remaining forest retention areas. The mitigation requirement was established as a condition of approval under previous site plans. Some of the stream valley buffer impacts have already occurred, for example portions of the uncompleted foundation work associated with the proposed Phase 2 apartment towers are located within the stream buffer. Enough passage of time has occurred that invasive species control will have to be repeated. Installation of supplemental plantings was never completed. The conditions of approval include requirements to perform invasive species management and to install additional forest plantings. With these conditions, the submitted Preliminary and Site Plan amendments are in conformance with the *Environmental Guidelines*.

c) Forest Conservation Plan

This Property has a long history, with numerous previous approvals including Preliminary Forest Conservation Plans (PFCP) and Final Forest Conservation Plans (FFCP). These plans, including FFCPs No. 820040170 (820030360), 820000340, 820000350, and 820090030, have covered the entire site, including some areas that have now been developed. The prior Forest Conservation Plans have included the establishment of Category I Conservation Easements on-site. These easements are being retained and modified to continue to provide retained and planted forest credited toward the forest mitigation requirements of the current applications.

The Applicant has submitted amended Preliminary and Final Forest Conservation Plans (FCPs) with the current development plan applications for Preliminary Plan 11998092C and Site Plan 82009003A. These plans continue to cover the entire area included in the original approved preliminary plan of subdivision and Preliminary Forest Conservation Plan (No. 119980920). FFCP 82009003A also replaces the FFCPs associated with Site Plan Amendments 82003036C and 82004017C. Areas of forest that were previously cleared must be accounted for in the amended Final Forest Conservation Plan for the entire Rock Spring site. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

The Subject Property is being submitted for review under its former zoning assignment of MXPD and is assigned a Land Use Category of Mixed-Use Development ("MDP") 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 51.71-acre Subject Property minus 1.04 acres of dedication for road construction by others and land in a transit easement, for a Net Tract Area of 50.67 acres. This figure remains unchanged from prior approvals. Prior to development on a portion of the site, there were 25.47 acres of existing forest on the Subject Property, some of which has already been cleared to make way for the Avalon Bay apartments on the northwest portion of the property. The amended FCPs retain 6.20 acres and remove 19.27 acres of forest (including forest already removed). The forest clearing generates a reforestation requirement of 11.69 acres. This amount is reduced by a maximum allowable 2.34-acre Credit for Landscaping previously provided with the Phase I development of the Rock Spring Centre (FFCP No. 820090030), leaving a reforestation requirement of 9.36 acres. This landscaping credit consists of a previously approved 0.38-acre landscaped area and tree canopy credit achieved by planting shade trees with a projected 20-year canopy area of 9.25 acres. Per the Forest Conservation Regulations, Section 22A.00.01.08(G)(7), tree canopy credit for reforestation can be granted for one-quarter of the projected 20-year canopy area, in this case 2.3125 acres, thus providing slightly more than the 2.34 acres that can be taken for credit in the Forest Conservation worksheet.

The Phase I development under Site Plan No. 820090030 also provided 3.62 acres of off-site forest banking, received approval to purchase 0.03 acres of fee-in-lieu credit, and to plant an additional 1.17 acres of forest on site. The current application will plant an additional 0.37 acres of on-site reforestation. All forest retained and new forest planted on site will be protected in Category I Forest Conservation Easements. The previously approved mitigation plus the new on-site afforestation totals 5.19 acres being provided toward the total forest mitigation requirement of 9.36 acres, leaving 4.17 acres of reforestation credit still required.

The Applicant will meet the remaining planting requirement through the purchase of off-site forest banking credits. If no off-site forest bank credits are available for purchase, the remaining requirement may be fulfilled through payment of a fee-in-lieu.

Because this FFCP Amendment is being reviewed according to the standards of the MXPDP zone, it is required to meet a minimum on-site forest retention requirement per Section 22A-12(f) of the Forest Conservation Law. For planned use development zones such as the MXPDP, on-site forest retention must equal the conservation threshold, or 20% of the Net Tract Area. In this case, the minimum retention required would be 10.13 acres. Previous approvals on this site have already permitted the clearing of 19.27 acres of forest, leaving 6.20 acres of on-site forest remaining. Section 22A-12(f)(C) says that "If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement." The afforestation threshold on this site is 15%, or 7.60 acres. The on-site reforestation of 1.17 acres was previously approved, plus the 0.37 acres of additional on-site reforestation included with this Application, added to the 6.20 acres of existing on-site

forest being retained, totals 7.74 acres of forest that will exist on-site within Category I Forest Conservation Easements. This exceeds the afforestation threshold by 0.14 acres.

d) Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone ("CRZ") requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires that trees that measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the Applicant qualifies for a variance under Section 22A-21.

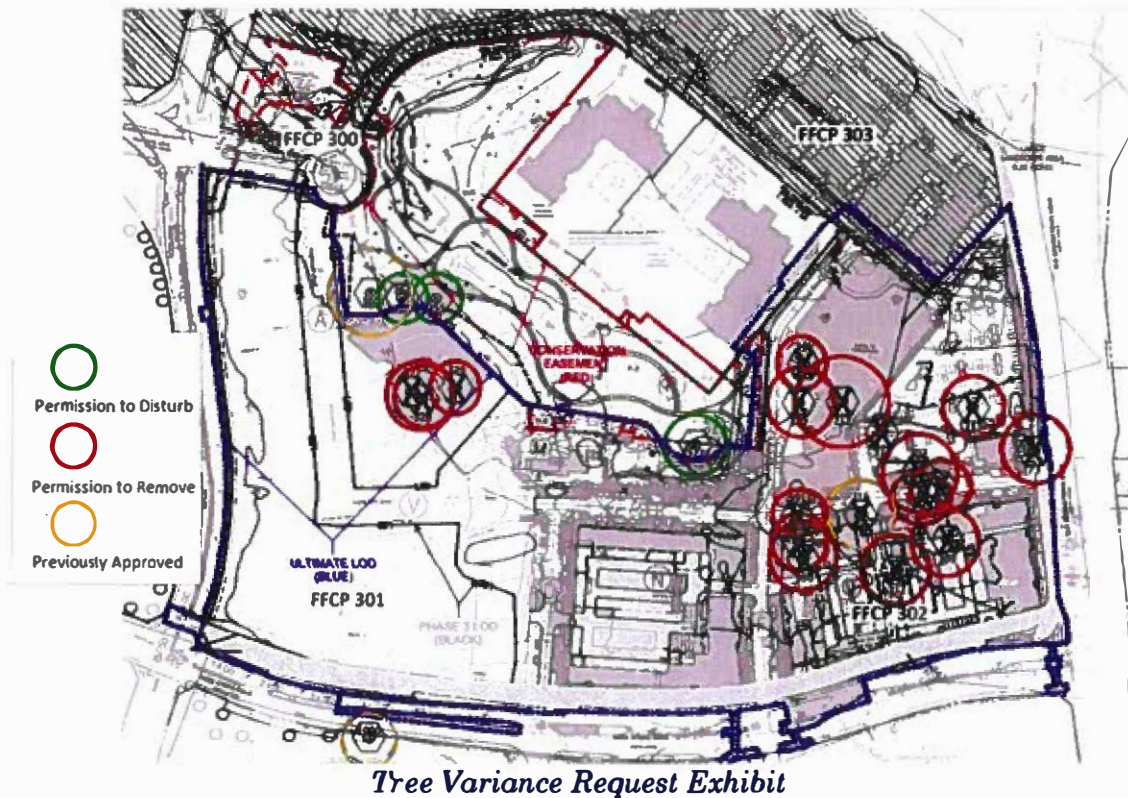
The Applicant submitted a variance request in a letter dated August 19, 2021. The variance request seeks permission to impact five (5) trees and remove seventeen (17) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. As noted in these tables, tree no. 360 was previously granted variance approval for a greater amount of disturbance, and does not require a new variance approval. Likewise, tree no. 316 was previously granted variance approval for removal, and does not require a new variance approval. This makes the actual variance request for permission to impact four (4) trees and remove sixteen (16) trees.

Protected Trees to be Impacted

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
322	White oak (<i>Quercus alba</i>)	37"	27.18%	Fair to good condition.
355	Tulip poplar (<i>Liriodendron tulipifera</i>)	31"	11.23%	Poor condition.
362	White oak (<i>Quercus alba</i>)	32"	24.72%	Good condition.
1000	Pin oak (<i>Quercus palustris</i>)	36"	4.14%	Fair condition. Previous variance approval for disturbance (9.5%).

Protected Trees to be Removed

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
73	Kentucky coffeetree (<i>Gymnocladus dioicus</i>)	42"	100%	Remove.
212	White oak (<i>Quercus alba</i>)	57"	100%	Remove.
213	Red maple (<i>Acer rubrum</i>)	41"	100%	Remove.
302	Silver Maple (<i>Acer saccharinum</i>)	50"	100%	Remove.
303	Green ash (<i>Fraxinus pennsylvanica</i>)	36"	100%	Remove.
304	Black cherry (<i>Prunus serotina</i>)	35"	100%	Remove.
309	Norway spruce (<i>Picea abies</i>)	34"	100%	Remove. Previous variance approval to disturb (13%).
312	Black walnut (<i>Juglans nigra</i>)	42"	100%	Remove. Previous variance approval to disturb (25%).
320	White oak (<i>Quercus alba</i>)	42"	100%	Remove.
327	Pignut hickory (<i>Carya glabra</i>)	33"	100%	Remove.
328	Black gum (<i>Nyssa sylvatica</i>)	36"	100%	Remove.
329	Tulip poplar (<i>Liriodendron tulipifera</i>)	32"	100%	Remove.
346	White oak (<i>Quercus alba</i>)	30"	100%	Remove.
989	No. red oak (<i>Quercus rubra</i>)	38"	100%	Remove.
990	No. red oak (<i>Quercus rubra</i>)	43"	100%	Remove.
991	No. red oak (<i>Quercus rubra</i>)	33"	100%	Remove.



Tree Variance Request Exhibit

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property.

The variance process begins with an understanding of the site constraints that determine the developable area of the site. On the Rock Spring site, the NRI/FSD has identified critical natural resources that must be protected, specifically the existing stream and the 4.15 acres of stream buffer that must be protected per the *Environmental Guidelines*. This area is included within existing and proposed forest conservation easements totaling 7.74 acres of on-site forest conservation preservation and planting. This reduces the developable area of the site to 42.93 acres, a reduction of just over 15% of the net tract area. The protected area includes many additional significant and specimen trees that will not be disturbed, and therefore require no variance approval.

The area of the site available for development of residential and non-residential buildings is further reduced by the area required for the construction of roads, sidewalks, pedestrian and bicycle infrastructure, and required parking. Additional constraints include topographic challenges. Topography also constrains the locations of

some essential utilities, such as sanitary sewers and stormwater systems, both of which drain by gravity, and therefore must be focused in the low points of the site.

The variance request includes the following trees that lie within the developable portion of the site, and are identified as priorities for retention under Section 22A-12(b)(3):

Tree No. 73 lies along the west side of the Property adjacent to Old Georgetown Road just north of Stone Gate Lane. It will sustain 100% impact to its CRZ from development of a retail building and a 10-foot sidewalk to be built along Old Georgetown Road.

Trees No. 212, 213, 320, and 346 are within a forest approved for clearing on the western portion of the Property to make way for the grocery store and commercial development.

Trees No. 302, 303, 304, and 991 lie within the right-of-way for the construction of Stone Gate Lane, its associated sidewalk, and a sanitary sewer.

Trees No. 309, 312, 989, and 990 stand within an area approved for clearing in the southwest corner of the Property for the construction of residential and commercial development and associated parking.

Trees No. 327, 328, and 329 are in the southeastern part of the site in a forest previously approved for clearing.

Trees No. 355 and 362 are located in the southeast corner of the large Category I Forest Conservation Easement in the center of the property. Portions of their CRZs extend beyond the boundary of the Conservation Easement into areas previously approved for clearing. These trees will be saved.

Tree No. 322 lies toward the southeastern corner of the large Category I Forest Conservation Easement located in the center of the property. A portion of its CRZ extends beyond the boundary of the Conservation Easement into an area previously approved for clearing. This tree will be saved.

Tree No. 1000 lies in the right-of-way just south of Rock Spring Drive. A small portion of its CRZ will be impacted by disturbance required for improvements to the median in the middle of Rock Spring Drive. This tree will be saved.

The 17 trees requested to be removed (including tree no. 316 which was previously approved for removal) are located within the developable area of the Property. The inability to remove these trees would potentially render portions of the site undevelopable for this project. Specifically, the Critical Root Zones of the large number

of variance trees on the site total 3.37 acres. Denying the Applicant permission to disturb these trees would reduce the developable area from 42.93 acres to 39.56 acres.

The CRZs of the variance trees also stand in the way of most of the right-of-way of Stone Gate Lane (Street B) between Stone Spring Street (Street F) and Old Georgetown Road, and a portion of the northern segment of Stone Spring Street. Avoiding the CRZs of the variance trees would require that portions of the remaining developable area receive the displaced streets and associated improvements. The impacts are particularly severe on the southeast portion of the Property with highly desirable frontages along Old Georgetown Road and Rock Spring Drive. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use otherwise developable portions of the Property for commercial and residential development allowed under the approved zone on the site, which is a reasonable and significant use of the Property that is consistent with prior regulatory approvals.



Variance Tree CRZs

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. 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.

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 large trees located within the developable area of the site. Granting a variance to allow disturbance within the developable portion of the site and meet the objectives of the Master Plan is not unique to this Applicant. The Planning Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

ii. 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 zone, and necessary design requirements of this Application, including street frontage improvements. As noted above, denial of the variance request would reduce the developable area of the site by 3.37 acres.

Additionally, up to 41,632 square feet of road right-of-way might have to be relocated into the remaining developable area, further reducing the area available for residential and non-residential buildings. Alternatives for replacing lost parking areas, such as structured and below-ground parking, are very expensive options that reduce the economic viability of the development. These reductions will also make it difficult to deliver critically needed housing, especially affordable housing.

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 existing conditions, the site design, and the layout of 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 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, wetland or Special Protection Area. The Application includes mitigation for the removal of these trees by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. The Planning Board finds that the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

Nine of the 17 trees proposed for removal are within forest areas approved for clearing under the Final Forest Conservation Plan. It has been M-NCPPC policy not to require mitigation for Protected Trees removed within forest stands since the removal of the forest is accounted for and mitigated through the Forest Conservation Worksheet.

Eight Protected Trees outside forested areas are proposed for removal in this variance request, which results in a total of 332 inches of DBH being removed. The Applicant includes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately one-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 83 inches with the installation of 28 three-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. The species and planting locations of these trees must be shown on the Certified Final Forest Conservation Plan. Although these trees will not be as large as the trees lost, they will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. There is some disturbance within the CRZ of four trees; however, they will receive adequate tree protection measures, their roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is recommended for trees that are impacted but retained. As conditioned, the mitigation trees will be protected as part of a five-year maintenance and management agreement.

The Planning Board approves the variance request with the mitigation as noted in the staff report.

e) Noise

This project is providing significant outdoor open space areas that are buffered from road noise by the distance from existing roads, existing and proposed development and by the existing forest in the middle of the Property. No noise mitigation structures should be needed to maintain exterior noise levels below the 65 dBA Ldn standard. All residential units will be required to meet the standard interior noise requirement of 45 dbA Ldn.

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

On October 18, 2022, DPS approved a Stormwater Management Concept and Site Development Stormwater Management Plan. The stormwater management concept proposes to meet required stormwater management goals via micro-bioretenment, roof top disconnect and modular wetland facilities.

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.

The Applicant has not had notice of any burial site on the Property, nor is the Property or any portion thereof included in the Inventory.

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

a) Abandonment of Parcel M

The Planning Board approves the abandonment of 0.57-acre Parcel M, which was previously dedicated to the County by the Applicant for recreation uses. Under Section 50-8.4 of the County Code, the Planning Board may authorize abandonment of dedicated land under Section 49-68 if the land has not been in public use. Section 49-68 requires that the Planning Board find that the previous dedication is not necessary for anticipated future public use, or that an alternative alignment or location will not adversely affect the public interest.

The Department of General Services (DGS) confirmed by email (dated January 20, 2023) that the County has not actively maintained or used Parcel M for any public purpose since the dedication. The email from DGS further states that “the original intended use for Parcel M as a ‘recreation center’ was subsequently relocated to Wall Park in conjunction with the White Flint Master Plan.”

The Applicant plans to reclaim Parcel M and incorporate it into the Property for resubdivision that will allow the development of Phase 3A. Parcel M is currently improved with asphalt paving that has fallen into a state of disrepair and boarded-up to prohibit public access. Further, the Applicant is providing several public amenities in lieu of Parcel M. The Applicant will either construct, or provide funding for, improvements at nearby Cabin John Park. The Applicant will also provide privately owned, publicly accessible amenities including an Urban Park (Rock Spring Plaza), an approximately 6-acre forested area with trails, and a minimum 10,000 sf dog park on Parcel 15.

b) Plan Validity

The Applicant validated the prior Preliminary Plan Amendment (No. 11998092B) by recording all the plats associated with the approved Plan. Therefore, the Planning

Board approves a new five-year validity period to record the plats associated with the Subject Preliminary Plan Amendment.

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 17 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 motion of Commissioner Hill, seconded by Commissioner Piñero, with a vote of 4-0; Chair Zyontz, and Commissioners Hill, Piñero, and Presley voting in favor of the motion, Commissioner Branson necessarily absent, at its regular meeting held on Thursday, February 16, 2023, in Wheaton, Maryland.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

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Rock Spring Centre: Preliminary Plan
Amendment No. 11998092C, Site Plan
Amendment Nos. 82003036C,
82004017C, 82009003A