

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No.23-039

Preliminary Plan No. 120220200

**Waters Village**

Date of Hearing: April 20, 2023

**MAY 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 August 24, 2022, KHR Waters Investments, LLC (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot on 3.52 acres of land in the CRT 1.0 C-0.75 R-0.75 H-65 zone, located at 19621 Waters Road, Germantown, MD (“Subject Property”), in the Germantown Policy Area and *2019 MARC Rail Communities Sector Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120220200, Waters Village (“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 April 10, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 20, 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 Pedoeem, seconded by Commissioner Bartley, with a vote of 4-0; Chair Zyontz, Commissioners Bartley, Hedrick and Pedoeem voting in favor with Vice Chair Piñero being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220200 to create one (1) 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/ Emily Vaias

M-NCPPC Legal Department

### **General Approval**

1. This Preliminary Plan is limited to one (1) lot for up to 29,880 square feet of commercial uses<sup>2</sup>.

### **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. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated March 23, 2023 and incorporates them as conditions of the Preliminary Plan approval, except for Condition 8 of the letter requiring undergrounding of utilities along Waters Road frontage. The Applicant must comply with each of the recommendations in the letter, except for Condition 8, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated February 10, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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.

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<sup>2</sup> Commercial uses include a mix of retail and restaurant uses, which can be changed to other commercial uses provided that there is no net increase in the number of approved trips.

7. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 16, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### **Other Approvals**

8. Before approval of a record plat or any demolition, clearing or grading for the Subject Property or issuance of any sediment control permit for improvements shown on the Preliminary Plan, the Applicant must receive Staff certification of any subsequent Site Plan(s) associated with this Preliminary Plan. The number and location of site elements including, but not limited to buildings, on-site parking, site circulation, sidewalks and bike facilities is determined through site plan review and approval.

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

9. If an approved site plan or site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan or site plan amendment.

#### **Environment**

10. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.

#### **Transportation**

##### **Existing Frontage Improvements**

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads.
  - a) All land necessary to accommodate a minimum of thirty-seven (37) feet as measured from the existing pavement centerline along the Subject Property frontage for Waters Road, or as shown on the certified preliminary plan.
  - b) All land necessary to accommodate full right-of-way dedication of the master-planned 70-foot along the Subject Property frontage for Waters House Avenue.

- c) All land necessary to accommodate fifty-seven and one-half (57.5) feet from the centerline along the Subject Property frontage for Wisteria Drive for a total master-planned width of 115 feet.
12. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of an eleven-foot (11-ft) wide shared-use path along the Property frontage on Wisteria Drive; an eight-foot (8-ft) sidewalk along the Property frontage on Waters House Avenue; and a ten-foot (10-ft) sidewalk along the Property frontage on Waters Road.
13. Before release of the first use and occupancy permit, the Applicant must construct all the above frontage improvements for Wisteria Drive, Waters Road, and Waters House Avenue including the following:
- a. The Applicant must underground all utilities along the Property frontage on Waters Road equivalent to no more than \$400,000 (Four Hundred Thousand Dollars) in construction costs.
  - b. Before the release of the first building permit, the Applicant must provide plans illustrating utility placement along Waters Road, including undergrounding of utilities, with engineering cost estimates to be reviewed and approved by staff at Montgomery Planning and MCDOT.

**Off-Site Improvements/LATR**

14. Before the release of any above ground building permit associated with the second building (Phase 2), the Applicant must provide a contribution of \$122,882 (One Hundred Twenty-Two Thousand Eight Hundred Eighty Two Dollars) towards the construction of a shared-use path on Walter Johnson Road between Bowman Mill Drive and Middlebrook Road in lieu of mitigation of bike and pedestrian facilities identified in the Applicant's Transportation Study.

**Record Plats**

15. Except for demolition of the existing structures, there shall be no clearing or grading of the site before recordation of plat(s).

**Easements**

16. The record plat must show necessary easements.
17. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

### **Certified Preliminary Plan**

18. The certified Preliminary Plan must contain the following notes:

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

19. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:

- a) Show resolutions and agency approval letters on the certified set.
- b) Provide approved Fire Department Access plan on the approved 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.*

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

This Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the CRT zoning, the land use recommendations in the 2019 *MARC Rail Communities Sector Plan* and the general building types contemplated for the Property, considering the Property's unique shape and frontage on three public roads. The lot as proposed will meet all the dimensional

requirements for area, frontage, and width requirements for the CRT zone as specified in the Zoning Ordinance.

Three of the four proposed buildings will be occupied by retail/service establishment uses, permitted uses in the CRT zone, under Section 59.3.1.6. The fourth building (C) is identified as a restaurant with a drive-thru. A restaurant is also a permitted use in the CRT zone; however, the drive-thru portion of the restaurant is a limited use in the CRT zone which requires Site Plan per Section 59.3.5.14.E.

As shown on the Preliminary Plan, the proposed lot can adequately accommodate the retail uses, drive-thru restaurant, and reasonably meet the width and setback requirements in the zone. Sufficient space has been provided for stormwater management facilities, parking, circulation and utility easements on the lot, after dedication.

As discussed in the Master Plan section below, the Applicant is providing all the necessary right-of-way dedication and easements necessary for public roads, streetscape improvements, pedestrian access, utilities and other public facilities along its three frontages.

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

The proposed development of Waters Village substantially conforms to the recommendations in the 2019 *MARC Rail Communities Plan*, the 2018 *Bicycle Master Plan*, and the 2021 *Complete Street Design Guide*. The development will be located north of Germantown Road (MD 118) in the GH designated area of the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* (see page 31 of the sector plan for the reference key). The GH designated area is a triangular site bounded by Waters Road on the west, Wisteria Drive on the east, and Germantown Road (MD 118) on the south. The proposed land use for the GH designated area is mixed-use. The Subject Property is within a five-minute walk of the Germantown MARC Station and across the street (Waters Road) from existing established residential development just outside of the 2019 *MARC Rail Communities Plan* boundary.

**2019 Approved and Adopted MARC Rail Communities Sector Plan**

The Vision for the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* states “the Germantown plan area is envisioned as a compact, connected and walkable neighborhood with a mix of land uses. These uses include community- and commuter-serving retail, a range of housing options and parking structures for MARC commuters near the station. The historic integrity of the station area is maintained through the preservation and adaptive reuse of historic structures, while the design and placement of new buildings are sensitive to the historic scale and character. A variety of public spaces and dedicated open spaces accommodates community gatherings and enhance existing public events, such as the flea market that draws visitors to the area.

The recommendations in the Sector Plan for the Germantown area are geared toward supporting this vision and transforming the Germantown MARC Station area from an auto-dominated environment to an environment with an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders, and motorists. The six areawide recommendations that are most applicable to the Waters Village site are as follows:

Strengthen and enhance historic areas and residential neighborhoods by allowing infill development that echoes the existing patterns of nearby historic resources and residential neighborhoods:

- Emphasize quality design of new development.
- Encourage compatible land uses for infill development.
- Build new structures with compatible architectural styles, scales and heights.
- Reflect historical development patterns, such as reduced front building setbacks.
- Encourage the adaptive reuse of underutilized historic structures in a manner that is sensitive and appropriate to the historic context.

The Plan provides further guidance with the detailed recommendations:

*Connect Germantown Recommendation A.2.a. (page 53)*

Transform the MARC station area from an auto-dominated environment to an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders and motorists (Sites GA, GF, GG, GH, GI, GJ, GK, GL and GM).

- Provide a network of local roads and pedestrian/bicycle facilities that will result in improved circulation and safe access, and create a fine-grained network of small, walkable blocks on the north side of the railroad tracks. Implement context-sensitive improvements to streets that calm traffic, improve safety and respect historic resources.

Waters Road was extended southward, within the past five years, to intersect with Germantown Road at a signalized intersection to provide pedestrians with safer crossing access to the Germantown MARC Station. In accordance with the 2019 *MARC Rail Communities Sector Plan*, the Waters Village development is dedicating public right-of-way for a portion of the new street connection from Waterford Hills Boulevard to Wisteria Drive. The remaining portion of the new street will be provided when the property to the south of the Waters Village site is redeveloped.

*Connect Germantown Recommendation A.2.c. (page 54)*

Design complete streets that are safe and comfortable for all users.

- Plant tall-growing shade trees between pedestrian and bicycle facilities and the roadway to buffer pedestrians and bicyclists from vehicles and provide traffic calming.
- Design roadways with narrow lane widths within the Urban Road Code Areas.
- Design stormwater management facilities to safely accommodate on-street parking and pedestrians using the sidewalks.



- Ensure pedestrian safety and comfort on all area streets by limiting crossing distances to 60 feet or less (curb-to-curb or between the curb and a minimum six-foot wide refuge).

*Waters House Avenue Connect Germantown Recommendation A.2.k. (page 64)*

Connect Waterford Hills Boulevard to future Century Boulevard Extended via Waters House Avenue, classify Waters House Avenue as a two-lane business district street with parking on both sides to serve adjacent development.

The Application conforms with this recommendation. The three edges of the site, Wisteria Drive, Waters Road, and the portion of Waters House Avenue within the Subject Property, will have wide, shaded sidewalks. Street trees will be planted in a landscaped street buffer contiguous to the roadway so that the landscaped street buffer on each street of the site serves as a safe buffer between pedestrians and vehicles while also providing shade on the sidewalk. Along the Waters House Avenue frontage, additional trees and other landscaping will be provided to screen the surface parking lot area from the adjacent right-of-way.

*Waters Road Connect Germantown Recommendation A.2.l. (page 65)*

Instead of a five-foot sidewalk on Waters Road as noted in the 2019 *MARC Rail Communities Plan*, the Applicant will be providing a wider 10-foot-wide shared-use path with on-street parking and a 7-foot street buffer that will promote and better serve pedestrian connectivity and safety. To accommodate these frontage changes, the current 70-foot right-of-way for Waters Road will slightly increase to 72.5 feet, necessitating a change in overall right-of-way dedication.

*Renew Germantown Recommendation B1.a. (page 69)*

Promote compatible infill development around the Boyds and Germantown MARC Stations, while protecting existing residential uses, historically significant structures and natural areas.

*Renew Germantown Recommendation B.1.e. (page 78)*

Create an attractive public realm that enhances the character of the Germantown MARC area.

- Carefully design infill development to reflect the character of the historic areas and promote a fine-scaled, walkable environment.
- Frame streetscapes and public spaces with buildings.
- Locate new buildings to define the street edges and create active street fronts.
- Orient the primary building facades and entrances to face public streets and improve pedestrian accessibility.
- Incorporate the setbacks, scale and architectural elements of historic buildings into any new infill or redevelopment in the existing residential area.
- Provide height transitions from existing buildings to new development.

The Subject Property will be compatible with the existing adjacent residential neighborhood. The proposed development has its buildings facing the two public right-of-ways closest to the Liberty Mills residential development with the parking behind and to the sides of the buildings. The building heights of the development will be up to 25 feet in height which is less than the buildings across Waters Road.

The largest building, Building A, will be located along the Wisteria Drive frontage of the block. As a long linear building, the façade will be broken into bays using ribbed cementitious panels as pilaster strips. Between the pilaster strips, materials such as fiber cement panels, EIFS and clear and spandrel glass are used to create a rhythm to the facades and break down the massing of the building. Although the primary entrance to the building will be from the surface parking lot, the Wisteria Drive façade of the building will be active with large expanses of aluminum storefront windows that provide views into the retail space, and as may be further refined at Site Plan.

The three smaller retail pad sites, which are between 3,200 and 4,100 square feet, will be located along the Waters Road frontage of the building across from the multifamily buildings of the Liberty Mill complex. Pedestrian pass-throughs

will be provided between buildings to allow for connectivity between the shared use path on Waters Road and the surface parking lot in the middle of the block. These pedestrian pass-throughs will also have areas for café seating for the retail spaces. The three smaller retail buildings will have similar architecture to Building A. Although the main entrances to the three buildings will be from the surface parking lot internal to the block, there will be large expanses of storefront windows and murals or artistic treatments along Waters Road, as defined at Site Plan.

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

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

**i. *Existing and proposed public transportation infrastructure***

Waters Road

The Subject Property has approximately 400 feet of frontage on Waters Road, classified as a Town Center Street in the 2021 *Complete Streets Design Guide* (“CSDG”) and a Business District Street in the 2018 *Master Plan of Highways and Transitways*. Waters Road has a master-planned right-of-way of 70 feet. To accommodate additional pedestrian frontage improvements, the master-planned right-of-way will increase to 72.5 feet, for a dedication of roughly 36.25-feet from the property line to the roadway centerline.

The Applicant will construct a 10-foot sidewalk along the western side of Waters Road between Wisteria Drive and westernmost point of Subject Property frontage, meeting the *Complete Streets Design Guide* requirement of a minimum 10-ft wide pedestrian facility. The 2018 *Bicycle Master Plan* makes no recommendations for the portion of the Subject Property’s frontage on Waters Road south of Wisteria Drive.

The 2019 *MARC Rail Communities Sector Plan* includes the following recommendation on undergrounding utilities: “Evaluate relocating

existing overhead utilities underground to provide room for a shade tree canopy and unobstructed bicycle and pedestrian facilities. All new or reconstructed roads should have underground utilities, if feasible. Coordinated public-private ventures may be needed to complete undergrounding in some areas. Where overhead utilities remain, shade trees should be located to allow a mature tree canopy to develop” (page 54). The Board is requiring the Applicant to underground utilities along the Property’s frontage on Waters Road with a cap of \$400,000 to improve reliability of the power grid, to create unobstructed bicycle and pedestrian facilities, and to provide adequate room for shade trees.

#### Wisteria Drive

The Subject Property has approximately 570 feet of frontage on Wisteria Drive, which is classified as a Town Center Boulevard per the 2021 *Complete Streets Design Guide*, with a recommended total right-of-way (ROW) width of 115 feet as per the 2018 *Master Plan of Highways and Transitways*. The Applicant will dedicate 57.5 feet of right-of-way, half of the total dedication, on the Application side of the road as measured to the roadway centerline. Additional dedication will be required from any application on the opposite side of Wisteria Drive as part of any future subdivision application.

The Applicant will construct a 11-foot sidepath along the southern side of Wisteria Drive between Waters Road and Waters House Avenue, within the existing right-of-way, which meets the Master Plan recommended width. The 2018 *Bicycle Master Plan* recommends a sidepath along the portion of the Subject Property’s frontage along Wisteria Drive. Additionally, the 2019 MARC Rail Communities Sector Plan also recommends a sidepath along Wisteria Drive on the southern portion abutting the Subject Property.

#### Waters House Avenue

The Applicant will dedicate and construct approximately 430 feet of future Waters House Avenue, classified as a Town Center Street in the 2021 *Complete Streets Design Guide*, with a 70-foot-wide right-of-way. The road will be constructed according to the cross section recommended by the *Marc Rail Communities Sector Plan*, with the exception that the

sidewalks will be increased to an 8-foot-wide standard from the 5 feet wide standard of the Plan to better accommodate foot traffic through this mixed-use neighborhood. The 2018 *Bicycle Master Plan* does not have any bike infrastructure recommendations for Waters House Avenue.

ii. ***Proposed private transportation infrastructure***

Two main drive aisles provide internal east-west vehicular and pedestrian connections. Two vehicular access points are proposed: one along Waters Road midway along the Subject Property, and one along future Waters House Avenue on the southeastern side of the Property. Additionally, the Waters House Avenue approach at Wisteria Drive will be restricted to right in/right out turning movements.

Curb radii have been reduced where feasible to 15 feet as recommended by the Urban Road Code. Stamped pavement will additionally highlight the high pedestrian traffic areas of the Property to increase driver awareness.

Truck loading for Building A will be located on the northwestern edge of the structure, accessed from the main drive aisle.

iii. ***Local Area Transportation Review (LATR)***

The Application was reviewed under the 2020-2024 *Growth and Infrastructure Policy* and associated 2022 *Local Area Transportation Review (LATR) Guidelines*. The proposed site replaces an existing business. The Application will generate 278 net new person trips during the AM weekday peak period and 382 net-new person trips during the PM weekday peak period based on the ITE Trip Generation Manual, 11th Edition, adjusted for the Germantown Town Center policy area (Table 1). A multimodal transportation impact study is required to satisfy the LATR Guidelines as the Application generates 50 or more net new person trips during a weekday peak hour. The Applicant submitted a study dated November 30, 2022.

**Table 1: Trip Generation – Person Trips\***

ITE Trip Generation								Multimodal Trip Generation			
Development	Measure	AM Peak Hour			PM Peak Hour			AM Peak Hour		PM Peak Hour	
		In	Out	Total	In	Out	Total	Auto Driver	Total Person Trips	Auto Driver	Total Person Trips
<b>Proposed</b>											
Strip Retail Plaza	26,680 SF	38	25	63	88	88	176	57	89	157	244
Fast Food with D/T	3,200 SF	73	70	143	55	51	106	128	199	95	148
<b>Total Trips</b>		111	95	206	143	139	282	185	288	252	392
General Light Industrial	5,054 SF	-4	-1	-5	-1	-4	-5	-5	-8	-5	-8
Single Family Residential	1	0	-1	-1	-1	0	-1	-1	-2	-1	-2
Existing Trips	--	-4	-2	-6	-2	-4	-6	-6	-10	-6	-10
<b>Net New Trips</b>								179	278	246	382

\*Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2022 LATR guidelines. Figures are rounded to nearest whole number. Source: Wells + Associates Traffic Impact Analysis submitted on July 21, 2022 and revised on November 30, 2022.

Eight intersections were studied, six within the Germantown Town Center Policy Area, an orange policy area. An additional two intersections are located within the Germantown West Policy Area, a yellow policy area. These intersections were studied using the HCM and CLV methodologies, respectively, in line with LATR requirements. All intersections will operate under the congestion standard:

- 1) Germantown Road & Waters Road/Bowman Mill Drive
- 2) Germantown Road & Wisteria Drive
- 3) Waters Road & Wisteria Drive
- 4) Waters Road & Waterford Hills Boulevard
- 5) Wisteria Drive/Driveway (Future Century Boulevard)
- 6) Waters Road & Site Driveway
- 7) Father Hurley Boulevard & Wisteria Drive
- 8) Father Hurley Boulevard & Sweetgum Circle/Middlebrook Road

*Table 2: Highway Capacity Manual Methodology - Seconds of Vehicle Delay*

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown Town Center Policy Area (HCM 63 Seconds)</i>						
Germantown Rd & Waters Road/Bowman Mill Drive	10	10	9	9	10	10
Germantown Road & Wisteria Drive	39	39	40	41	41	43
Waters Road & Wisteria Drive	3	3	3	3	3	4
Waters Road & Waterford Hills Boulevard	6	4	6	4	5	4
Wisteria Drive/Driveway (Future Century Boulevard)	2	6	1	6	3	7
Waters Road & Site Driveway	N/A	N/A	N/A	N/A	2	2
Father Hurley Boulevard & Wisteria Drive	28	25	28	25	28	25
Father Hurley Boulevard & Sweetgum Circle/Middlebrook Road	23	29	23	29	23	29

*Table 3: CLV Methodology*

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown West Policy Area (1,425)</i>						
Germantown Road & Waters Road	417	633	427	655	421	699
Wisteria Drive & Germantown Road	568	762	606	815	644	869
Waters Road & Wisteria Drive	469	417	479	429	511	453
Waters Road & Waterford Hills Boulevard	249	351	249	351	277	397
Commercial Driveway/Wisteria Driveway/Future Waters House Avenue	411	657	416	669	486	755
Future Intersection	182	190	182	190	250	296
Father Hurley Boulevard & Wisteria Drive	721	727	736	763	742	777
Father Hurley Boulevard & Middlebrook Road	746	976	750	985	752	989

All eight intersections in the Germantown Policy Area operate below the 63 second congestion standards. All four intersections in the Germantown West Policy Area operate below the 1,425 CLV standard. No congestion mitigation is necessary, and a finding can be made for vehicle adequacy based on the results of the transportation impact study.

***(1) Signal Warrant***

Signal warrant analysis was performed for the currently unsignalized intersection of Waters Road and Wisteria Drive. The analysis found that the intersection met the nine warrants studied. The study determined that a traffic signal is needed at the intersection. However, it should be noted that Warrant 2 for four-hour vehicular volume nears, but does not exceed, the warrant threshold for two hours of the study period (4 – 6 pm). As a result, MCDOT is installing a traffic signal at the intersection. The four-way traffic signal will also include new crosswalks at Wisteria Drive and Waters Road, in addition to a crosswalk at Waters Road north of Wisteria Drive.



## ***(2) Multimodal Analysis***

The transportation impact study analyzed multimodal transportation facilities for pedestrians, bicyclists, bus transit, and ADA compliance. Deficiencies in these networks were found in all adequacy tests. These deficiencies are being addressed in part through the Applicant's off-site mitigation improvements as discussed below, which will provide improvements up to the LATR proportionality guide. The local bicycle and pedestrian networks were studied within a 1,000-foot buffer of the Subject property. Facilities along major roads, particularly Germantown Road and Wisteria Drive, include deficiencies, exceeding the minimum Level of Traffic Stress standards for cycling and Pedestrian Level of Comfort for walking.

Additionally, the study area has a significant history of crashes within the 1,000-feet of the. Between 2017-2022, 114 non-fatal crashes were recorded, with three reported as 'suspected severe injury.' Of the 114 total crashes, 106 involved motor vehicles. Seven crashes involved pedestrians, while one involved a bicyclist.

Speed studies were conducted along Waters Road, Wisteria Drive, and Germantown Road within a 1,000-foot radius. The study commenced on February 8<sup>th</sup>, 2022, and ended on February 10<sup>th</sup>, 2022, both beginning and concluding at midnight. The 85<sup>th</sup> percentile for vehicular speed along each of the studied segments exceeded 120% of the posted speed limit. For context, the posted speed limits for each road are 25 MPH (Waters Road), 30 MPH (Wisteria Drive), and 35 MPH (Germantown Road). Additional speed enforcement along these segments would be necessary to address these deficiencies but are beyond the scope of this Application.

According to the proportionality guidelines of the 2022 LATR, the cost of mitigation improvements is not to exceed \$122,882 in off-site LATR mitigation improvements. The Applicant proposes to offsite requirements by providing this funding towards the construction of a sidepath along Walter Johnson Road, from Bowman Mill Drive to Middlebrook Road.

**iv. *Other Public Facilities and Services***

Other public facilities and services are available and adequate to serve the proposed lot. The Lot will be served public water and sewer. There is a 10-inch waterline within the existing Waters Road right-of-way, which the Applicant will tie into and extend with an 8-inch water to serve the new buildings. From the existing 15-inch sewer main within the Wisteria Drive right-of-way, new 4–8-inch sewer lines will be extended to serve the individual buildings. The use of public water and public water is consistent with the existing W-1 and S-1 service categories designated for the Property.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Property has adequate access for emergency vehicles as shown on the approved Fire Department Access Plan dated March 16, 2023.

There are existing 10-foot-wide public utility easements along the west side of the Waters House Avenue frontage. New utility easements will be provided on the frontage of Waters Road, Wisteria Drive and the continuation of Waters House Avenue, which will be sufficient to accommodate future utility installation. Storm drain easements will be provided to connect the existing and proposed infrastructure on-site.

Electric and telecommunications services are available and adequate to serve the Subject Property. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the *2020-2024 Growth and Infrastructure Policy*. The Application can be adequately served by all applicable public facilities and services.

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

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

a) Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420211290 for this Property was approved in March 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD included 3.52 acres, of which 98 percent of this land drains to the Little Seneca Creek watershed which is classified as Use Class III-P waters by the State of Maryland. Approximately 3,350 square feet (0.08 acres) in the eastern corner of the Property located near the intersection of Wisteria Drive and Water House Avenue is within the Middle Great Seneca Creek watershed, which is designated Use Class IV-P waters by the State of Maryland. The Subject Property does not contain any forest; however, there are four trees with a diameter at breast height (“DBH”) of 24 inches or more located on or immediately adjacent to the Subject Property, two of these trees have a DBH greater than 30 inches. The Property does not contain any streams, wetlands, floodplain, stream buffers, steep slopes, or highly erodible soils. There are no documented rare, threatened, or endangered species on the Property.

Forest Conservation Plan

The Applicant submitted a Preliminary and Final Forest Conservation Plan (“FCP”) with the current development plan applications for Preliminary Plan No. 120220200 and Site Plan No. 820220260. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and comply with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned CRT-1.0 and is assigned a Land Use Category of Commercial and Industrial (“CIA”) 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 15% of the Net Tract Area.

The tract area for forest conservation purposes includes the 3.49-acre Property plus 0.70 acres of offsite disturbance associated with this Application, for a total net tract area of 4.19 acres. There is no existing forest within the net tract area which results in an afforestation requirement of 0.63 acres. The Applicant

proposes to meet the planting requirement offsite by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment.

Of the four trees identified with a DBH of 24 inches or more, three of these will be removed as part of this Application; two of which have a DBH greater than 30 inches (Tree #1 and #4) and are discussed in the Forest Conservation Variance section. Tree #2, a 26" DBH Norway maple in fair condition will be removed due to necessary grading and construction of a required stormwater management feature. The fourth tree (Tree #3) is located offsite and will not be impacted by the proposed disturbance.

b) Forest Conservation Variance

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

Variance Request - The Applicant submitted a variance request in a letter dated July 1, 2022. For this Application, the variance provision applies to all impacted trees that are 30 inches DBH and greater. The Applicant proposes to remove two trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 4).

*Table 4 – Protected Trees to be removed*

<b>Tree ID</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>DBH</b>	<b>% Impact</b>	<b>Status</b>
1	Norway maple	<i>Acer platanoides</i>	39 in.	100%	Remove tree for building demo, new retail
4	American elm	<i>Ulmus americana</i>	39 in.	60%	Remove tree for Waters House Avenue construction

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. In this case, the unwarranted hardship is caused by the existing site conditions, necessary layout of the proposed development on the Property, and development standards of the zone.

Tree #1, a 39" DBH Norway maple is located midway along the Property frontage on Waters Road. This is within the developable area of the Property, including the existing access that will be adjusted and improved. It is near an existing building that is proposed to be demolished to allow for the redevelopment to occur. Tree #4, a 39" DBH American elm is located just offsite, within the right-of-way of future Waters House Avenue, which is required to be improved as part of this Application as a master-planned roadway and to provide a second point of access to the Property.

The existing conditions including the current access from Waters Road, the configuration of the Property, and necessary secondary access requirements have largely determined the layout of the development. In addition, the existing structures and gravel parking that need to be demolished to allow for the redevelopment have resulted in the need for a variance to remove Protected Trees. The inability to remove these trees would potentially render portions of the site undevelopable. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the commercial use for which it is zoned, which is a reasonable and significant use of the Property.

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

***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.***

Granting the variance will not confer a special privilege on the Applicant as the removal of the specified trees is due to the development of the Property, location of the trees and necessary site design requirements. The two Protected Trees that will be removed are located within the developable area of the site and the right-of-way for Waters House Avenue. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application, including street frontage improvements.

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

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

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed

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

Mitigation for Trees Subject to the Variance Provisions

There are two Protected Trees proposed for removal in this variance request and the Applicant is proposing to mitigate for the loss. The Application proposes to remove 78 caliper inches of Protected Trees that will be mitigated for at a rate that approximates the form and function of the trees being removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 19.5 inches with the installation of seven 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. The mitigation trees will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

The Board approves the variance request with mitigation.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a Stormwater Management Concept/Site Development Stormwater Plan approval from MCDPS Water Resources Section dated February 10, 2023. The Application will meet stormwater management goals via micro-bioretenment facilities and within planter boxes. Enhanced filters will be added where possible. An infiltration trench will be used for improvements within the Waters House Avenue right-of-way. The application of these approaches will provide for full environmental site design (ESD) to the maximum extent practicable (MEP).

***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.***

Not applicable to this Property.

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

Not applicable to this Property.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 26 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 Hedrick, seconded by Commissioner Bartley, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick, and Pedoeem, voting in favor of the motion, at its regular meeting held on Thursday, May 18, 2023, in Wheaton, Maryland and via video conference.

  
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Jeffrey Zyontz, Chair  
Montgomery County Planning Board



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Waters Village, Preliminary Plan No. 120220200 and  
Site Plan No. 820220260