

Montgomery Planning

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date: October 10, 2023

TO: Artie L. Harris, Chair, Montgomery County Planning Board

VIA: Alexandra Duprey, Planner II, Upcounty Planning *AD*
Sandra Pereira, Regulatory Supervisor, Upcounty Planning *SP*
Patrick Butler, Chief, Upcounty Planning *PB*

FROM: Tanya Stern, Acting Planning Director *TS*

RE: Corrected Resolutions:
A. MCPB No. 23-025
Larsen Property, Administrative Subdivision No. 620230030

Please find the Corrected Resolution for Larsen Property, Administrative Subdivision No. 620230030, MCPB No. 23-025 attached. The Planning Board held a hearing and approved the application on March 16, 2023. The Resolution was mailed out to all parties of record on April 11, 2023. Minor corrections to the Resolution have become necessary because the adopted Resolution did not include the complete language of the Code section regarding the building envelope separation requirements. This has resulted in confusion regarding completion of the plat. Therefore, Conditions 2 and 21, and Table 1 under the findings, should specify that there must be 80 feet of separation between the building envelopes of each proposed lot and 1) the building envelopes of all lots that are adjacent to the rear lot line of the lots and 2) the building envelopes of all lots that are between the flag lot and lot without frontage and Oaklyn Drive. In essence, the 80-foot minimum separation between building envelopes applies solely to the front and rear lot lines, not the side lot lines.

These corrections reflect accurate information and do not alter the intent of the conditions approved by the Planning Board. Staff is requesting the Planning Board's approval so that the Corrected Resolution can be issued to all parties of record.

Attachments:

A. MCPB No. 23-025 (Redline), Larsen Property, Administrative Subdivision No. 620230030

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-025

Administrative Subdivision No. 620230030

Larsen Property

Date of Hearing: March 16, 2023

CORRECTED RESOLUTION

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

WHEREAS, on December 9, 2022, Norton Land Design, LLC (“Applicant”) filed an application for approval of an administrative subdivision plan to create **3** lots on 7.18 acres of land in the RE-2 zone, located at 10420 Oaklyn Drive Potomac (“Subject Property”), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan area; and

WHEREAS, Applicant’s administrative subdivision plan application was designated Administrative Subdivision Plan No. 620230030, Larsen Property (“Administrative Subdivision 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 March 3, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 16, 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 Hedrick, seconded by Vice Chair Piñero, with a vote of 2-0-1; Commissioner Hedrick and Vice Chair Piñero voting in favor, Commissioner Bartley abstaining, and with Chair Zyontz and Commissioner Pedeem being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Administrative Subdivision Plan No. 620230030 to create **3** lots on the Subject Property,

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www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

subject to the following conditions:¹

General Approval

1. This Administrative Subdivision Plan is limited to three (3) lots for three (3) single-family detached dwelling units.
2. At the time of building permit application, the Applicant will supply proof to M-NCPPC of an 80-foot minimum separation between the building envelopes of each lot and the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lots and lot without frontage; and the building envelopes of all lots that are between the proposed flag lots and lot without frontage and Oaklyn Drive.all adjacent lots.
3. At the time of the pre-construction meeting, the Applicant will coordinate with the Montgomery County Department of Permitting Services (“MCDPS”) for adequate safety measures during construction, including fencing and screening, between the northern driveway to Lots 1 and 2 and the neighboring Montessori school to the north.

Adequate Public Facilities and Outside Agencies

4. The Adequate Public Facilities (“APF”) review for the Administrative Subdivision 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

5. The Administrative Subdivision 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 expiration of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

Outside Agencies

6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 28, 2023 and incorporates them as conditions of the Administrative Subdivision Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Administrative Subdivision Plan approval.
7. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.

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

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 September 22, 2022 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 Administrative Subdivision Plan approval.

Other Approvals

9. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Administrative Subdivision Plan.
10. Before recording the plat, the Applicant must obtain approval of a stormwater management concept from the MCDPS – Water Resources Section, and such approval may not conflict with the Administrative Subdivision Plan approval.

Environment

11. Before recordation of any plats and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:
 - a. Record a Category I Conservation Easement over all areas of forest planting and environmental buffers as specified on the approved Preliminary and Final Forest Conservation Plan (“FCP”). Areas within the environmental buffer that are encumbered by sewer easements must be excluded from the Conservation Easement. 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(s).
 - b. Install permanent conservation easement signage and fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, and mitigation tree plantings, including variance tree mitigation plantings. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. All applicable measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of the watershed. The use of herbicides should be avoided where possible.
 - d. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel to the M-NCPPC Planning Department for the 1.45 acres of new forest planting, mitigation trees, and maintenance, including invasive

species management controls, credited towards meeting the requirements of the FCP.

12. The Applicant must remove the existing wire fence located within the stream buffer and install the Afforestation/Reforestation plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
13. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling a minimum of 17 caliper inches.
14. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
15. The Applicant must comply with all tree protection and tree save measures shown on the FCP. Tree save measures not specified on the FCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
16. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the FCP.

Transportation Frontage Improvements

17. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) right-of-way necessary to accommodate forty (40) feet from the existing pavement centerline along the Subject Property frontage for Oaklyn Drive.
18. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a six-foot-wide sidewalk along the Property frontage on Oaklyn Drive.
19. The Applicant must construct a six-foot wide sidewalk along the Oaklyn Drive frontage to include a minimum 6-foot-wide buffer.

Record Plats

20. There shall be no clearing or grading of the site prior to recordation of plat(s).
21. All building restriction lines must be shown on the record plat. The plat must reflect the following building restriction lines as lines as shown on the Administrative Subdivision Plan:

- a) A 50-foot minimum BRL from the front lot line setback for all lots (Lots 1, 2, and 3).
- a)b) A 45-foot minimum BRL from the rear lot line for all lots (Lots 1, 2, and 3).
- b)c) A 150-foot minimum lot width at the BRL for all lots.
- e)d) An 80-foot minimum separation between the building envelopes of each lot and the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lots and lot without frontage; and the building envelopes of all lots that are between the proposed flag lots and the lot without frontage and Oaklyn Drive.all adjacent lots.

Easements

- 22. The record plat must show necessary easements.
- 23. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

Certified Administrative Subdivision Plan

- 24. The certified Administrative Subdivision 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 Administrative Subdivision Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*
 - b. *The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Administrative Subdivision Plan is required to be on-site at all times. The pre-construction meeting must include discussion and provision of adequate safety measures during construction, including fencing and screening, between the northern driveway to Lots 1 and 2 and the neighboring Montessori school to the north.*
- 25. Before submittal of the Certified Administrative Subdivision Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set
 - b) Include the approved Fire and Rescue Access plan in the certified set

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board

hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

- 1. The Administrative Subdivision Plan meets the requirements of Chapter 50, Section 6.1.C for up to 3 lots for detached houses permitted in the RE-2 zone.***

C) Subdivision for creation of certain residential lots. Up to 3 lots for detached houses may be created in any residential or rural residential zone under these procedures if:

- 1. The lots are approved for the standard method of development;***

The three (3) lots were submitted and comply with the standard method development in the RE-2 zone.

- 2. Written approval for any proposed well and septic area is received from the Department of Permitting Services, Well and Septic Section before approval of the plat;***

The lots will not be served by wells or septic areas, as the Property is served by public water and sewer service and is designated in the W-1 and S-1 categories.

- 3. Any required road dedications and associated public utility easements are shown on the plat and the Applicant provides any required improvements;***

The Applicant must dedicate a right-of-way necessary to accommodate forty (40) feet from the existing pavement centerline along the Subject Property frontage for Oaklyn Drive. The Applicant will coordinate with County agencies to ensure that any necessary public utility easements are shown on the plat.

- 4. The requirements for adequate public facilities under Section 4.3.J are satisfied before approval of the plat; and***

As conditioned and discussed below, the requirements for adequate public facilities have been satisfied.

- 5. Forest conservation, stormwater management, and environmental protection requirements are satisfied before approval of the plat.***

The Subject Property is subject to Chapter 22A of the County Code. As conditioned and discussed below in the Technical Review for Forest Conservation section, the Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A, and is compliant with the Montgomery County Planning Department's Environmental Guidelines.

As conditioned, the Project will satisfy all Stormwater Management requirements with the Department of Permitting Services before approval of record plat.

2. The Administrative Subdivision Plan meets the technical review requirements of Chapter 50, Section 4.3.

A. 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 Administrative Subdivision Plan meets all applicable sections of the Subdivision Regulations, including the requirements under Section 50.4.3.C. for flag lots (Lots 1 and 2) and lots that do not abut a road (Lot 3). The approved lot sizes, widths, shapes, and orientations are appropriate for the location of the subdivision, considering the general recommendations of the 2002 *Potomac Subregion Master Plan*, the building type and residential use contemplated for the Property. The approved lots were reviewed for compliance with the development standards and dimensional requirements for the Residential Estate-2 (RE-2) zone as specified in the Zoning Ordinance under the standard method of development. The lots will meet all applicable development standards and dimensional requirements for area, frontage, and width. A summary of this review is included in Table 1. Under Section 50.4.3.C. of the Subdivision Regulations, the Planning Board may approve flag lots and lots that do not abut on a public or private road with the findings as described below.

Flag lots

Lots 1 and 2 are flag lots. Per Section 50.4.3.C.1.b, *“The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved. In approving a flag lot, the following provisions apply:*

- i. *In residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and (a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot; and (b) the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts.”*

As approved, the lots meet the above requirements. The approved lots are within the RE-2 zone. The Subject Property is an existing flag lot, which positions this property behind other properties that front on Oaklyn Drive and limits the

frontage on Oaklyn Drive right-of-way to 25 feet. As a result, the position and shape of the tract does not permit other feasible ways to subdivide without flag lots. The approved building restriction lines maintain building envelopes at least 80 feet from the building envelopes of adjacent lots to the rear of the proposed flag lots, as well as the lots between the flag lots and Oaklyn Drive.

Lots that do not abut on a public or private road

Lot 3 does not abut a public or private road. Per Section 50.4.3.C.1.c, *“The Board must not approve lots that do not abut a public or private road, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide, and the Board determines that appropriate separation between building envelopes will be achieved. In approving a lot that does not abut a public or private road, the following provisions apply:*

- i. *The Board must not approve more than two lots in a subdivision that do not abut a public or private road;*
- ii. *The lots will be served by a private driveway that serves no other lots without frontage.*

The Applicant is only approved for one lot that does not abut a public or private road, Lot 3. Lot 3 will be served by the existing private driveway and access easement between the Property and Oaklyn Drive that serves no other lot without frontage.

- iii. *In residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed lot without frontage and (a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage; and (b) the building envelopes of all lots that are between the proposed lot without frontage and the road from which it is accessed.*

As conditioned, Lot 3 meets the provisions above. The Subject Property has an existing house that uses an existing access easement. The approved building restriction lines ensure that the building envelopes are at least 80 feet from the approved building envelopes of all lots that are adjacent to the rear lot line of Lot 3, as well as the lots between the existing house on Lot 3 and Oaklyn Drive.

- iv. *The Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot.*

Additional building restriction lines are not necessary to ensure appropriate separation.

- v. *All building restriction lines must be shown on the plat; and*

The conditions provide that the building restriction lines must be shown on the plat.

vi. The access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.

As approved, Lot 3 meets the above provisions. An existing 20-foot-wide access easement is located between the parcels north of the Property, between Lot 3 and Oaklyn Drive, to accommodate emergency vehicles. On September 27, 2022 the Applicant received approval of the Fire Department Access Plan from the Montgomery County Department of Permitting Services, Fire Department Access and Water Supply, demonstrating that access to the Property will be adequate for emergency vehicles. Public utilities are available along Oaklyn Drive and will be brought into the Property as needed within the shared driveway for Lots 1 and 2, or the existing access easement for Lot 3 that will be maintained. Lot 3 is accessible for public services and will not be detrimental to future development of adjacent lands.

Table 1 – RE-2 Zone Development Review Table (Standard Method of Development)

Development Standard	Permitted/ Required	Lot 1: Flag Lot	Lot 2: Flag Lot	Lot 3: Lot Without Frontage²
Min. Lot Size	2.0 acres	2 acres	2 acres	3 acres
Max. Density	1 dwelling unit per 2 acres	1 du/2 acres	1 du/2 acres	1 du/3 acres
Minimum Setbacks (ft)				
Front	50 ft.	50 ft min	50 ft min	50 ft min
Side	17 ft./35 ft for sum of side setbacks	17 ft min	17 ft min	17 ft min
Rear	35 ft.	35 ft min	35 ft min	35 ft min

<u>Minimum Building Restriction Lines (BRLs)²</u>	<u>Front</u>	<u>50 ft.</u>	<u>50 ft.</u>	<u>50 ft min</u>	<u>50 ft min</u>
	<u>Rear</u>	<u>45 ft. min</u>	<u>45 ft.</u>	<u>45 ft.</u>	<u>45 ft.</u>
Min. Lot width at Building Line	150 ft.	150 ft	150 ft	150 ft	
Min. Lot width at Front Lot Line³	25 ft.	25 ft	25 ft	n/a ⁴	
Max. Building Height	50 ft.	50 ft max	50 ft max	50 ft max	
Max. Lot Coverage	25%	25% max	25% max	25% max	
Frontage on Street or Open Space	Required	Provided	Provided	Exempt under Chapter 50, Section 50.4.3.C.1.c	

B. The Administrative Subdivision Plan substantially conforms to the Master Plan.

The Administrative Subdivision Plan substantially conforms to the 2002 *Potomac Subregion Master Plan*. The Property is in the Potomac Planning Area south of the Village of Potomac and recommended for low-density residential development that conforms to the RE-2 zone. The Application includes two lots that are 2-acres in size and one lot that is 3-acres in size. The Property is not called out in the Master Plan for specific land use recommendations and the

² The BRLs reflect the requirements described in Section 50.4.3.C. for flag lots and lots that do not abut a public or private road.

³ Front Lot Line: A lot line abutting a right-of-way or common open space. (Section 59.1.4.2)

⁴ Lot 3 does not abut a right-of-way or common open space, and therefore does not have a front lot line. Section 50.4.3.C allows the Planning Board to approve lots that do not abut a public or private road, otherwise known as a lot without frontage.

approved subdivision meets the requirements of the RE-2 zoning shown on the zoning map.

Per the 1983 *Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*, the Subject Property is not located within proximity to roadways with average daily traffic volumes that would result in adverse noise impacts to the approved residential homes. Therefore, a noise analysis for traffic related noise impacts is not required.

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

a) Roads and other Transportation Facilities

i. Existing Facilities

Oaklyn Drive is delegated as a *Neighborhood Connector* under the 2021 *Complete Streets Design Guide* (CSDG) roadway classifications, with approximately 80 feet of right-of-way. At present, there are no existing bicycle or pedestrian facilities on Oaklyn Drive along the frontage of the Property.

ii. Planned Facilities

The CSDG proposes a sidewalk on one side and a shared-use path on the other side of the streets designated as Neighborhood Connectors. The Applicant is providing a 6-foot sidewalk along the Property's frontage, consistent with recommendations from the CSDG. The CSDG and the *2018 Bicycle Master Plan* envision a sidepath for the adjacent side of Oaklyn Drive. No additional master planned improvements are required for this Application. This Application does not include any other transportation infrastructure from what has been discussed. Therefore, roads and transportation facilities are adequate to support the Application.

b) Local Area Transportation Review (LATR)

As demonstrated via the Applicant's Traffic Exemption Statement, dated October 7th, 2022, the Application generates fewer than 50 new person trips in the morning and evening peak hours. As a result, the Application is not subject to additional Local Area Transportation Review (LATR). Adequate transportation facilities exist to support and service the Property in accordance with Section 50.4.3.J of the Subdivision Regulations.

c) Schools

Public school facilities will be adequate to support and service the Application. The project is served by Potomac ES, Herbert Hoover MS and

Winston Churchill HS. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2. Applicable FY2023 School Adequacy.

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Potomac ES	480	368	76.7%	+112	No UPP	197	214	280
Herbert Hoover MS	1,139	1,077	94.6%	+62	No UPP	188	290	461
Winston Churchill HS	1,949	2,070	106.2%	-121	No UPP	59	269	562

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. Based on the school capacity analysis performed, using the FY2023 Annual School Test, this Application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

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

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

1. Natural Resource Inventory

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420222540 for this Property was approved in September 2022. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The NRI/FSD identifies the 7.18-acre Subject Property located within the Rock Run Watershed, which is classified as Use Class I-P by the State of Maryland. The Subject Property does not contain any forest; however, there is some forest on the adjacent properties to the south and southwest. There are 37 trees located on and immediately adjacent to the Property that are ≥ 24 inches in diameter at breast height (“DBH”), 19 of which have a DBH of 30 inches or more.

There is one stream, a tributary to Rock Run, which flows through the southeastern corner of the Property as well as two areas of wetlands,

existing M-NCPPC and FEMA mapped 100-year floodplain, and the associated stream buffer located on-site. There are no mapped highly erodible soils, no slopes greater than 25 percent, and as confirmed by the Maryland Department of Natural Resources, there are no known rare, threatened or endangered species on the Property.

2. Forest Conservation

The Applicant has submitted a combined Preliminary and Final Forest Conservation Plan with this Application. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned RE-2 and is assigned a land use category of Medium Density Residential ("MDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table in the Trees Technical Manual. The MDR land use category is assigned an afforestation threshold of 20% and a conservation threshold of 25% of the net tract area. The net tract area of 7.25 acres is based on the 7.18-acre Property plus 0.07 acres of off-site disturbance related to the Application, including the construction of a 6-foot wide sidewalk along the Property's frontage on Oaklyn Drive, the driveway apron to access the proposed lots, and the house connections to the water line located along Oaklyn Drive. There is no existing forest on the Property, which results in an afforestation requirement of 1.45 acres. The Application proposes to meet the planting requirement on-site by planting 1.65 acres of forest in the stream buffer and the land adjacent to the stream buffer. The forest plantings will occur in three areas that are bisected by the existing WSSC sewer line easements. All of the stream buffer except for the WSSC easements, and all of the planted forest will be protected in a Category I Conservation Easement.

3. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 8 Protected Trees as identified in the Staff Report. In accordance with Section 22A-

21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for three lots without the Variance.

The Board makes the following findings necessary to grant the Variance:

- a. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the Variance to remove Trees 33 and 34 and to impact but retain Trees 1, 9, 26, 30, 31, and 32 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site. Trees 33 and 34 will be removed due to necessary grading for Lot 2, water line house connections, and disturbance due to the removal of existing features including a barn and gravel drive/parking area. Tree 1 will be impacted for the removal of the existing driveway, Tree 9 will be impacted by grading for Lot 2, Tree 26, located on approved Lot 1, will be impacted due to the construction of the sewer line to serve the approved house, Trees 30 and 31 are located on approved Lot 2 and will be impacted by disturbance related to the removal of the existing basketball court and construction of the sewer line house connections for the approved houses on Lots 1 and 2. Tree 32, located on approved Lot 1 will also be impacted by the removal of the existing basketball court.

The Applicant has worked with Staff to revise the plans resulting in additional tree retention, and minimization of impacts to trees. The resulting removals and impacts have been minimized but cannot be avoided. Therefore, the granting of this Variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based on existing site conditions and the requirements to meet development standards.

- c. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested Variance is a result of the existing conditions and the required improvements, and not because of land or building use on a neighboring property.

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

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed and impacted are not located within a stream buffer, wetland, or a Special Protection Area. Additional trees will be planted on the Property as mitigation for the Protected Trees removed and as part of the forest conservation requirements. These trees will provide water quality benefits.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper inches in size. This results in a total mitigation requirement of 17 inches which will be satisfied with the installation of six 3-inch caliper trees.

Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to the Piedmont Region of Maryland and installed on the Subject Property, outside of any rights-of-way and/or utility easements. It has been M-NCPPC policy not to require mitigation for Protected Trees impacted but retained as these trees will be provided tree protection measures during construction and their roots will be allowed to regenerate and continue to function as they have been.

Accordingly, the Board grants the requested variance.

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

As conditioned, the Application must obtain a stormwater management concept approval from DPS Water Resources Section before platting.

F. 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 4.3.M

Not applicable to this Property as there are no known burial sites.

G. Any other applicable provision specific to the property and necessary for approval of the Administrative Subdivision is satisfied.

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Corrected Resolution constitutes the written opinion of the Board in this matter, and the date of this Corrected Resolution remains April 11, 2023 is _____ (which is the date that the original this Resolution was 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 Corrected Resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner _____, seconded by Commissioner _____, with a vote of **XX-XX-XX**; Chair _____, Vice Chair _____, and Commissioners _____, _____, and _____, voting in favor of the motion, **[if any abstaining - Commissioner _____ abstaining]** at its regular meeting held on Thursday, _____, in Wheaton, Maryland and via video conference.

Artie L. Harris~~Jeffrey Zyontz~~, Chair
Montgomery County Planning Board