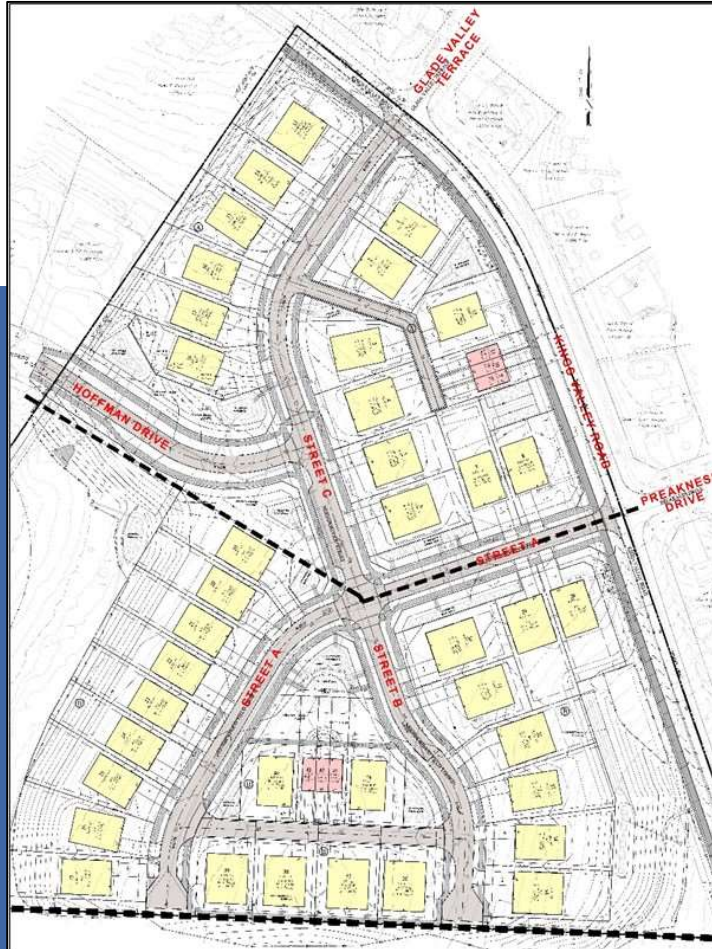


**TREGONING PROPERTY  
PRELIMINARY PLAN NO. 120230120 AND PRELIMINARY  
FOREST CONSERVATION PLAN NO. F20230420**



**Description**

Request to create forty-four (44) lots for single-family dwelling units, composed of thirty-eight (38) lots for single-family detached dwelling units and six (6) lots for townhouse dwelling units, including 12.5% MPDUs, with associated public streets, open spaces, and recreational amenities.

No. 120230120

Completed: 11-3-2023

MCPB

Item No. 9  
11-16-2023

Montgomery County  
Planning Board  
2425 Reedie Drive, Floor 14  
Wheaton, MD 20902

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### LOCATION/ADDRESS

On Kings Valley Road, West of Preakness Drive

### MASTER PLAN

1994 Clarksburg Master Plan & Hyattstown Special Study Area

### ZONE

RE-1 Zone

### PROPERTY SIZE

37.85 acres (17.81 acres for development, 20.04 acres to remain undeveloped)

### APPLICANT

Elm Street Development

### ACCEPTANCE DATE

June 23, 2023

### REVIEW BASIS

Chapters 50 and 22A

## Summary:

- Staff recommends **approval with conditions** of Preliminary Plan No. 120230120 and accompanying Forest Conservation Plan No. F 20230420.
- As an optional method of development project, the Application provides a minimum of 12.5% MPDUs.
- As conditioned, the Applicant will:
  - Provide a sidewalk connection to Cedar Grove Elementary School.
  - Provide a hard surface path connection to Kings Valley Road.
  - Extend Hoffman Drive to connect to and through the proposed community.
  - Revise the northeast block layout to extend the alley through the block and provide rear-loaded dwelling units that are oriented with the front façades facing the public streets.
  - Remove the sewer easements from Parcel 617 until a future time of development.
- The Applicant will provide a sidewalk connection to Cedar Grove Elementary School as its required LATR off-site mitigation project.
- The Applicant will be required to submit a Site Plan application, whereupon design review comments are to be addressed.
- Staff has received citizen correspondence on the Application with concerns regarding street measurements, sidewalk widths, and potential parking impacts to existing neighboring residents.

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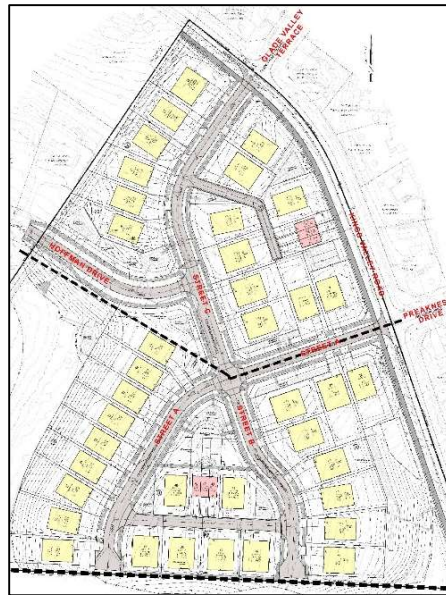
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## SECTION 1: EXECUTIVE SUMMARY

The Application is located in Germantown and follows the recently approved Pre-Preliminary Plan application (No. 720220020) that sought a binding decision by the Planning Board on the issues of the Hoffman Drive connection, the off-site connection to Damascus Recreational Park, and the location and distribution of MPDUs (Attachment C).

The Planning Board supported the submission of preliminary plan and site plan applications that provided the Hoffman Drive connection and the location and distribution of MPDUs as shown on the Pre-Preliminary Plan application. The Planning Board concluded that an internal road connection is required under the Subdivision Regulations and applicable Master Plans. The Planning Board supported the location and distribution of MPDUs as duplex and triplex units, which would resemble single family detached units in terms of massing and architecture. The Planning Board did not support the proposed off-site connection, as a shared-use path along Kings Valley Road to Damascus Recreational Park. Additionally, the Planning Board recognized the limits of any developer obligations to construct or pay for the side path extension based on right-of-way constraints along Kings Valley Road due to engineering and construction issues based on topography and farm crops, the reasonableness and proportionality of the cost based on provisions in the Subdivision Regulations, 2020-2024 *Growth and Infrastructure Policy*, Local Area Transportation Review Guidelines, and recently approved policy guidance on construction and fee-in-lieu for frontage improvements.

The Preliminary Plan application substantially conforms to the Pre-Preliminary Plan application on the binding decisions by the Planning Board. A few outstanding issues have been conditioned as part of the current application and are described in the following paragraphs:



*Figure 1 – Preliminary Plan Layout*

### Hoffman Drive Extension

The Applicant is providing an extension of existing Hoffman Drive into the property that will connect to the proposed internal road network. Final storm drainage analysis will need to be conducted to ensure the transition from the proposed closed section drainage system into the existing open section drainage will not result in deficient runoff characteristics and/or impacts to offsite properties.

### Offsite Improvements

The Applicant has not studied or provided a list of off-site mitigation options to fulfill the multimodal study criterion of the LATR. In this absence, Staff in conjunction with MCDOT, MCDPS, and MDOT SHA have agreed to pursue a limited sidewalk link between Cedar Grove Elementary School and Hoffman Drive. This would provide an approximately 360-foot-long connection along Ridge Road, which currently has no bike or pedestrian infrastructure. The connection will significantly improve areawide pedestrian connectivity to and from the school and address a serious deficiency along Ridge Road, a busy, high-speed road.

### Path Connection to Kings Valley Road

Staff is requesting the proposed natural surface trail in the south of the site be paved to accommodate all-weather pedestrian travel to provide a more direct paved connection to Kings Valley Road and points south, namely Damascus Recreational Park. The existing 40-foot grade will require additional grade work and construction of one or more switchbacks.

### Northeast Block Layout

Within the northeast block of the proposed development, the Applicant is proposing a short alley which only serves a few homes, with a random mix of front-loaded, rear-loaded, and side-loaded dwelling units (Figure 3). Staff provided layout and design review comments to the Applicant team throughout the review of the Pre-Preliminary and Preliminary Plan applications. As conditioned, these comments must be addressed for the northeast block within the current Application, as well as the future site plan application. As conditioned, the alley from Public Street C should be fully extended from its proposed mid-block termination to Public Street A. The single-family dwelling units should be re-oriented to face and front Public Street C and Kings Valley Road (Figure 2). The extension of the alley would accommodate rear-loaded dwelling units for the northeast block, as well as providing improved access for residents and emergency vehicles. Providing a mix of front-loaded and rear-loaded units allows for flexibility while also using the rear-loaded units to frame the street and provide an edge and front for Kings Valley Road, Public Street C, and common open space. As proposed, the majority of single-family detached units within the Application have been configured solely as front-loaded units with long driveways. The northeast block offers the best opportunity to provide rear-loaded single-family detached dwelling units, in combination with front-loaded and side-loaded dwelling units, and provide direct, connected access from the fronting public streets and provide well designed, desirable streetscape within the public realm.





Figures 2 & 3 – Staff Sketch for Northeast Block Layout (left) & Applicant Proposed Northeast Block Layout (right)

### Sewer Alignment, Parcel 617

The Applicant is currently showing on the Preliminary Forest Conservation Plan (“PFCP”) two 20-foot-wide possible sewer easements bisecting the stream and stream valley buffer on Parcel 617. These areas are called out by note on the PFCP saying they are “Future 20’ sewer easement. Location to be determined at a future date” and it is Staff’s understanding that these were placed on the PFCP in order to address the requirements under Montgomery County Resolution 18-1272, Amendments to the Comprehensive Water Supply and Sewerage Systems Plan, dated 10/30/2018. However, this Resolution states that the low-pressure sewer main for Parcel 617 will be evaluated through the development plan review process. The Resolution also states that the sewer main will need to minimize impacts to wooded areas, streams, and stream buffers.

Showing the sewer alignments now on the PFCP within the streams and stream buffers is premature. As shown, the alignments do not minimize impacts to streams and stream buffers. The areas of proposed sewer alignment through the stream buffers will need to be omitted from the standard protection afforded stream buffers with the placement of a Category I Conservation Easement over the stream buffer. A development plan application has not been submitted for Parcel 617 as required by County Council Resolution 18-1272 and the need or location for this particular sewer alignment has not been evaluated. At the time a development plan application is submitted for Parcel 617, the sewer alignments can be evaluated by the appropriate agencies and impacts to the stream and stream buffers can be minimized at that time.

## SECTION 2: RECOMMENDATIONS & CONDITIONS

### PRELIMINARY PLAN 12020120

Staff recommends approval with conditions of the Preliminary Plan to create forty-four (44) lots for single-family dwelling units, composed of thirty-eight (38) lots for single-family detached dwelling units and six (6) lots for townhouse dwelling units, including 12.5% MPDUs, with associated public streets, open spaces, and recreational amenities. All site development elements shown on the latest electronic version of the Preliminary Plan No. 120230120 as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:<sup>1</sup>

#### GENERAL APPROVAL

1. This Preliminary Plan is limited to 38 lots for 38 single-family detached dwelling units and 6 lots for 6 townhouse dwelling units, including a minimum of 12.5% MPDUs on 37.85 acres.

#### ADEQUATE PUBLIC FACILITIES

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 October 24, 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 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 Maryland State Highway Administration (“SHA”) in its letter dated September 26, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the

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<sup>1</sup> For the purposes 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.

recommendations in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
8. 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 30, 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.
9. 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 [TBD] 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.
10. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA"), in its letter dated October 2, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### FUTURE SITE PLAN APPROVAL REQUIRED

11. Before clearing or grading or recording a plat for the Subject Property, the Applicant must receive Staff certification of a Planning Board-approved site plan. The number and location of site elements, including but not limited to dwelling units, on-site parking, site circulation, sidewalks, and bikeways will be 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 or site plan amendment.

#### TRANSPORTATION

##### Frontage Improvements on Existing Roads

13. 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 thirty-five feet from the existing pavement centerline along the Subject Property frontage for Kings Valley Road.
14. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of an 8-foot wide sidepath along the property frontage on Kings Valley Road.



## New Roads

15. The Applicant must dedicate the rights-of-way and ensure construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes.
  - a) Street(s) A, B, C, consistent with MC-210.01 as modified.

## Private Roads

16. The Applicant must provide Private Alleys A and B, including any sidewalks, bikeways, storm drainage facilities, street trees, streetlights, 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:
  - b) Record plat must show the Private Road in a separate parcel.
  - c) 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 in the Montgomery County Code § 50-4.3.E et seq regarding private roads. 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.
  - d) Before issuance of the first building permit, 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 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.

#### Pedestrian Infrastructure

17. The Applicant must construct a paved 8-foot-wide shared use path connecting from the sidewalk adjacent to unit 35 as identified on the Preliminary Plan and connect to the proposed pedestrian infrastructure on Kings Valley Road. The path must not exceed an average 10% grade along its length.

#### Off-Site Improvements/LATR

18. Before the release of any above ground building permit, the following off-site improvements must be permitted and bonded (to ensure construction) pursuant to MCDOT and/or MDOT/SHA requirements:
  - a) A six-foot-wide sidewalk with a minimum 6 ft. wide street buffer along Ridge Road to connect from the existing northern lead-in walkway for Cedar Grove Elementary School to and crossing Hoffman Drive.
19. Before the release of the 25<sup>th</sup> building permit, the Applicant must construct the sidewalk connection between Cedar Grove Elementary School and Hoffman Drive.

#### RECORD PLATS

20. There shall be no clearing or grading of the site before recordation of plat(s).
21. The record plat must show necessary easements.
22. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

#### Notes and Labels

23. The record plat must reflect all areas under common ownership.
24. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 (“Covenant”).

#### DEVELOPMENTS WITH MPDUS

25. The final number of MPDUs as required by condition 1 above will be determined at the time of site plan approval.

#### CERTIFIED PRELIMINARY PLAN

26. 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 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.*

27. 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) Include the approved Fire Department Access Plan.
  - c) Update the data table to match the Staff Report.
  - d) Remove all notations regarding buildable outlots for Parcel 617.
28. Before approval of the Certified Preliminary Plan, the Applicant must provide the full extension of the alley from Public Street C to Public Street A in Block A. All dwelling units, with the exception of Units 1 and 2, in Block A must be rear-loaded and served by the through alley with frontage along Kings Valley Road and Public Street C. The revised layout must be reviewed and approved by Planning Staff and MCDOT.
29. Before the approval of the Certified Preliminary Plan, the Applicant must provide final storm drainage analysis of the Hoffman Drive extension to ensure the transition from the proposed closed section drainage system into the existing open section drainage will not result in deficient runoff characteristics and/or impacts to offsite properties. This analysis must be reviewed and approved by Planning Staff and MCDOT.
30. Before the approval of the Certified Preliminary Plan, the Applicant must label the two proposed new roads Public Road A and Public Road B as well as the two alleys as Private Alley A and Private Alley B on all the sheet drawings.

#### **PRELIMINARY FOREST CONSERVATION PLAN F20230420**

Staff recommends approval with conditions of Preliminary Forest Conservation Plan No. F20230420 (“PFCP”). All site development elements shown on the latest electronic version of the Preliminary Forest Conservation Plan No. F20230420, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:

1. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. F20230420 (“PFCP”), as approved in conjunction with the Preliminary Plan of Subdivision:
  - a) The Applicant must obtain approval of a Final Forest Conservation Plan (“FFCP”) before submitting a record plat for review or obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
  - b) The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.
  - c) Before recordation of the plat and the start of any demolition, clearing, grading, or construction, 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.
- d) Before Certified Preliminary Forest Conservation Plan approval, the Applicant must remove the proposed 20-foot-wide sewer line easements through the stream valley buffer shown on the PFCP on Parcel 617 and record a Category I Conservation Easement over the entirety of the stream valley buffer exclusive of the AT&T right-of-way. At the time that a development application is submitted for Parcel 617, the sewer line alignment will be determined with minimal disturbance to the stream buffer or associated forest.
  - e) Before Certified Preliminary Forest Conservation Plan approval, the Applicant must remove the Category I Conservation Easements over Reforestation Areas P-1 and P-2.
  - f) Before Certified Preliminary Forest Conservation Plan approval, the Applicant must address all outstanding Staff comments on the PFCP as listed in EPlans.

### SECTION 3: COMMUNITY CORRESPONDENCE

Staff has received comments from the Sweepstakes HOA Board and one community member. The Sweepstakes HOA had procedural questions regarding the preliminary plan review process. The community member expressed concerns regarding pass-through traffic, adequacy of parking, street dimensions, and proposed sidewalk widths (Attachment I).

The comments from the Sweepstakes HOA pertained to future Planning Board hearing dates, whether any actions were taken by Montgomery County on the application, and whether any additional information was shared with the Planning Board. Staff addressed the comments from the Sweepstakes HOA by explaining that the Planning Board hearing date would occur in the future depending on the application review, no actions had been taken by Montgomery County, and that no additional information had been shared with the Planning Board as there has not been a hearing yet on the Preliminary Plan application.

Vehicular traffic was analyzed as part of the Study's multimodal transportation study (Attachment M). The study did not find any net new trips to pass through the existing Sweepstakes community. Nevertheless, a minimal number of occasional new trips may occur – however, given the minimal scale expected, this minimal number of trips would not qualitatively alter local road conditions. Additionally, it is not expected that the extension of Hoffman Drive into the proposed development would generate new pass-through trips. The indirect alignment, existing stop-controlled intersections, and planned slow speed of proposed narrow internal roads would not make the use of Hoffman Road an attractive alternative to Ridge Road, even in congested times.

The Application meets applicable parking requirements. Most units will provide space for up to four vehicular spaces, (two in the garage and two on the driveway), significantly exceeding zoning requirements. All MPDU dwellings will provide a minimum of two spaces. Additionally, four visitor spaces will be provided on-street. Limited additional visitor parking may be explored as part of the Site Plan, though at present the priority has been a reduction on overall impervious surfaces needed as well as a reduced overall development footprint to reduce environmental impacts.

Roadway cross sections will include 21 feet of paved space for vehicular travel, meeting the travel lane width standards of the 2021 Complete Streets Design Guide. This is adequate for all bi-directional vehicular travel, including for fire access. While this is a reduction from local roadway widths, the smaller cross section will reduce impervious surface, encourage slower and safer driving speeds, while still safely and efficiently handling all vehicular movement.

Sidewalks are proposed at six feet in width to comply with the 2021 *Complete Streets Design Guide* requirements for residential roadways. This will accommodate comfortable 2-way and side-by-side walking, as well as meet all ADA requirements. A reduction in sidewalk width is not recommended as part of this application as any reduction would reduce functionality and safety.



## SECTION 4: SITE LOCATION & DESCRIPTION

### VICINITY

The Tregoning Property is composed of two existing parcels, Parcel 104 and Parcel 617. Both parcels are zoned RE-1 and located southwest of the intersection of Kings Valley Road and Preakness Drive in Clarksburg. Parcel 104 (“Subject Property”) is a triangular shaped parcel that is the primary focus for development within this Preliminary Plan Application (“Application”). Parcel 617 is an irregularly polygonal-shaped parcel that will remain in its existing state. Surrounding properties are predominantly residential in character with single-family detached residential houses on a mix of lot sizes, all within the RE-2C, R-200, and RC Zones. The Subject Property abuts residential properties to the north and east which are zoned RE-2C, with a TDR-2.0 receiving area located to the northeast. Damascus Recreational Park and the Magruder Branch Trail are located to the east across King Valley Road. To the west are residential properties and Cedar Grove Elementary School on R-200 zoned land. To the southwest is Parcel 617 and directly south of Parcel 104 is RC-zoned land that is currently utilized for agriculture. The Cedar Grove Historic District is located to the south of Parcel 617.

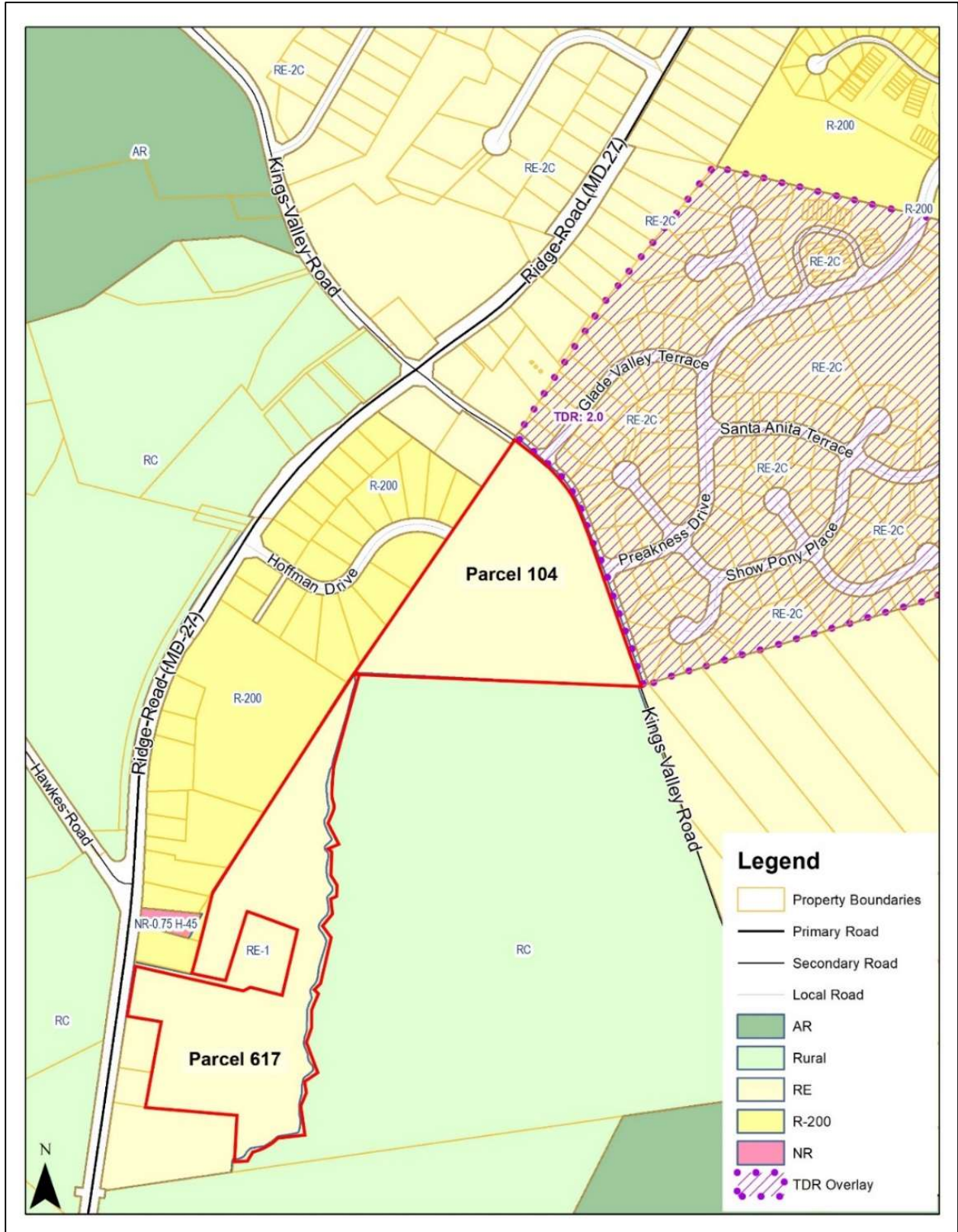


Figure 4 - Zoning Map



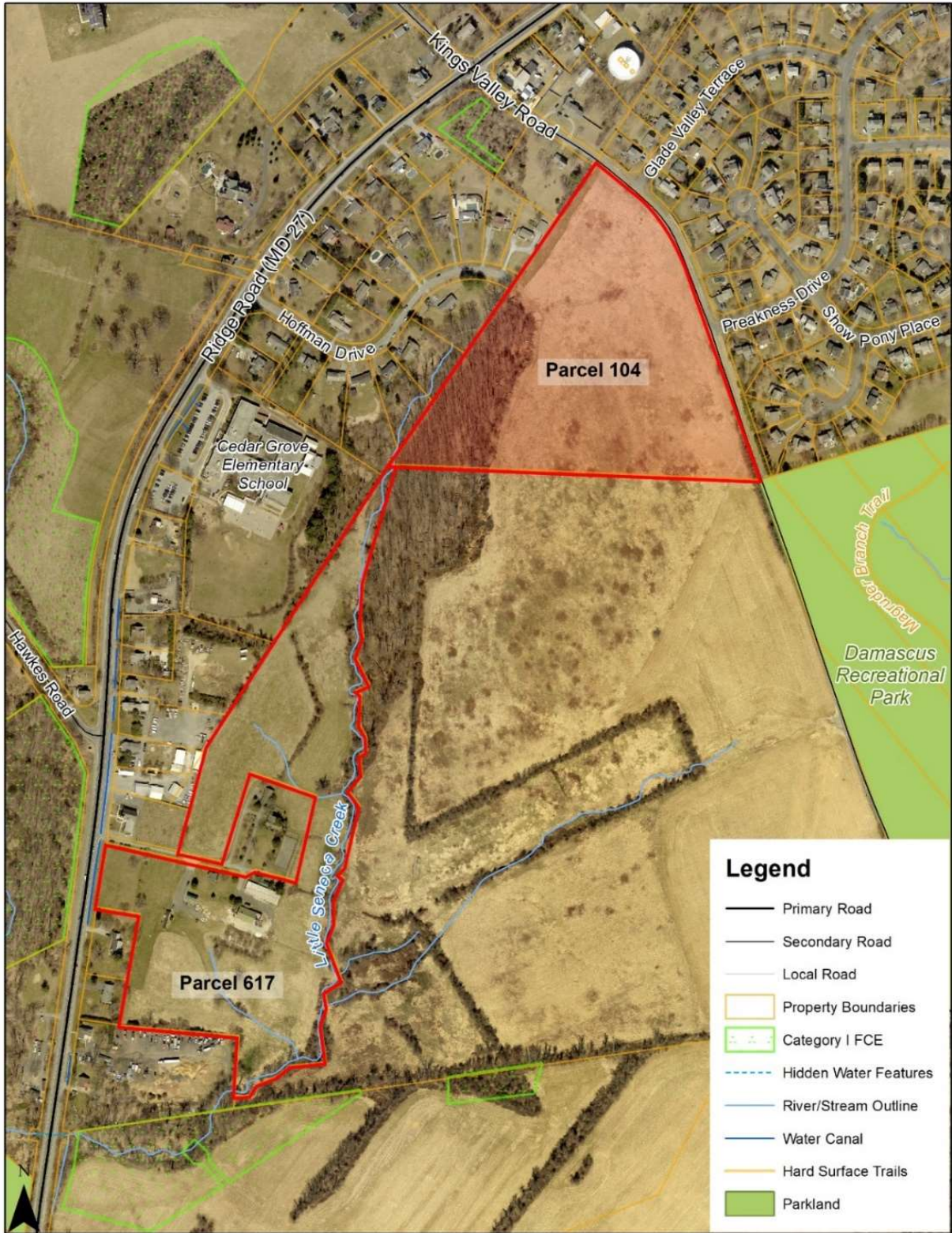


Figure 5 – Aerial View of the Subject Property

## PROPERTY DESCRIPTION

Parcel 104 is approximately 17.81 acres and Parcel 617 is approximately 20.04 acres, resulting in a cumulative total of 37.85 acres. Parcel 617 is developed with existing structures and is proposed to remain in its current state. For the purposes of this Application, Parcel 104 is being treated as the Subject Property as it is the area that will be developed for dwelling units. The Subject Property, as depicted in Figures 4 and 5 above, is undeveloped and utilized for agricultural purposes. There are no existing structures located onsite. Parcel 104 is bisected with a ridge line that runs northeast to southwest and divides the property into two watersheds. Approximately two-thirds of Parcel 104 drains to the west-southwest and is located within the Little Seneca Creek Watershed, a Use Class IV-P watershed. The southeast portion of Parcel 104, about one-third of the parcel, drains to the east-southeast and is located within the Upper Great Seneca Watershed, a Use Class III-P watershed. There is a stream located off-site and adjacent to the southwest property line of Parcel 104 within the Little Seneca Creek Watershed with a forested stream buffer that extends onto the Property. The stream flows south and briefly crosses the Property in the southwest corner as it flows onto Parcel 617. There are also steep slopes associated with the stream channel alignment. Except for the stream buffer, the Property is unforested and is currently being used for active agricultural practices. No known rare, threatened, or endangered species or habitats exist on the Subject Property. There are no designated historic sites on or near the Property.

## SECTION 5: PREVIOUS APPROVALS & PROPOSAL

### PREVIOUS APPROVALS

#### Pre-Preliminary Plan No. 720220020

On March 3, 2023, the Planning Board, by Resolution MCPB No. 23-018, approved Pre-Preliminary Plan No. 720220020 requesting a binding decision by the Planning Board on the issues of the Hoffman Drive connection, the off-site connection to Damascus Recreational Park, and the location and distribution of MPDUs on the Subject Property.

### PROPOSAL

#### Preliminary Plan No. 120230120

Preliminary Plan No. 120230120 was accepted on June 23, 2023, and the Applicant proposes to create 44 lots for single-family dwelling units, composed of 38 lots for single-family detached dwelling units and six lots for townhouse dwelling units, including 12.5% MPDUs, with associated public streets, an



alley, open spaces, recreational amenities, and master plan recommended improvements (“Application”). As part of the Application, new public streets and alleys will be constructed to serve all dwelling units. Density from Parcel 617 is being transferred to Parcel 104 while retaining two development rights. The Application is subject to the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area*. Approval of a site plan application is required before the residential development can be built.

Additionally, as part of a future site plan application, Staff requests that site grading be minimized in a manner that avoids the visual appearance of uniform grading, particularly around the southwestern and southeastern edges of the proposed development. Providing limited, strategic grading provides a more ‘natural’ and irregular appearance, as well as reducing the amount of site disturbance to the Subject Property.

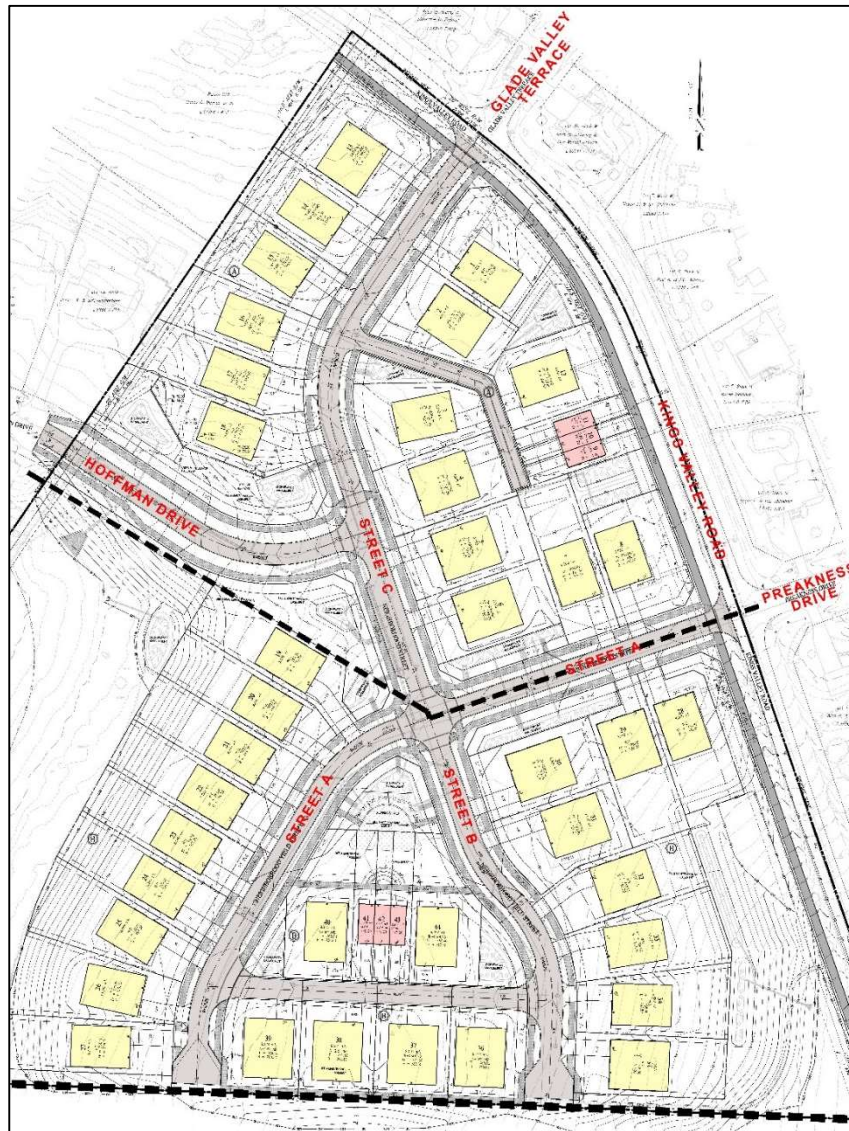


Figure 6 – Preliminary Plan Layout



## SECTION 6: ANALYSIS & FINDINGS, PRELIMINARY PLAN #120230120, 50.4.2.D

The Preliminary Plan would create forty-four (44) lots for single-family dwelling units, composed of thirty-eight (38) lots for single-family detached dwelling units and six (6) lots for townhouse dwelling units, including 12.5% MPDUs, with associated public streets, open spaces, and recreational amenities. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application has been reviewed by other applicable State, County and City agencies, all of whom have recommended approval.

- 1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.***

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision, taking into account the recommendations of the Master Plan, and for the building type (single-family attached and townhouse structures) use contemplated for the Subject Property.

The Application is proposed under the optional method in accordance with Section 59.4.4.6.D of the Zoning Ordinance. The Preliminary Plan has been reviewed by other applicable county agencies, all of whom have recommended approval.

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

The Application is creating two new residential blocks, Block A and Block B, which are generally divided by Public Street A and the Hoffman Drive extension. Block B is appropriately designed and connected with Public Streets A and B, as well as an alley. As conditioned, the extension of Alley A in Block A as a thru alley and the reoriented dwelling units (Figures 2 and 3) results in an improved block design and layout for the proposed residential use. Additionally, the extension of Alley A creates improved lotting, building orientation, and access for residents and emergency vehicles. As conditioned, these two new blocks are an appropriate size based on the proposed residential use, as well as properly separated by the bounding public streets.

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

As conditioned, the lot size width, shape, and orientation are appropriate to the proposed residential development. Each lot can reasonably accommodate the proposed structure, parking, and utilities.

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

The proposed development also provides adequate space to accommodate the required storm water management facilities, open space parcels, and streets. The Master Plan does not recommend any public sites for the Subject Property.

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

The lots were reviewed for compliance with the dimensional requirements for the RE-1 zone as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, and can accommodate the single-family attached and townhouse dwelling units which can reasonably meet the width and setbacks requirements in that zone. A summary of this review is included in Table 1.

*Table 1 - Tregoning Property Preliminary Plan Data Table for RE-1 Zone, MPDU Optional Method, Section 59.4.4.6.D*

<b>RE-1 Zone (MPDU)</b>	<b>Allowed / Required (SFD)</b>	<b>Allowed / Required (Townhouse)</b>	<b>Proposed for Approval (SFD)</b>	<b>Proposed for Approval (Townhouse)</b>
<b>Site</b>				
Usable area (min.)	17 acres	17 acres	37.85 acres	37.85 acres
Density (max.) (units/acre of area)	1.22 (20 units max.)	1.22 (20 units max.)	1.22 (46 units max.)	1.22 (46 units max.)
Common Open Space (min.)	10%	10%	10% min.	10% min.
Site Coverage (max.)	N/A	40%	N/A	40% max.
<b>Lot</b>				
Lot Area (min.)	9,000 sq. ft.	1,200 sq. ft.	9,000 sq. ft.	1,200 sq. ft.
Lot Width at Front Building Line (min.)	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Lot Width at Front Lot Line (min.)	25 feet	14 feet	25 feet (min.)	14 feet (min.)
Frontage on Street or Open Space	Required	Required	Required	Required
Lot Coverage (max.)	35%	N/A	35%	N/A
<b>Placement</b>				
Front Setback from Public Street (min.)	35 feet	35 feet	35 feet	35 feet
Front Setback from Open Space	10 feet	10 feet	10 feet	10 feet
Side Street Setback, Abutting Lot Fronts on the Side Street and is in a Residential Detached zone	35 feet	35 feet	35 feet	35 feet
Side Street Setback, Abutting Lot does not Front on the Side Street or is not in a Residential Detached zone	20 feet	20 feet	20 feet	20 feet
Side or Rear Setback	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Side Setback, Abutting	20 feet	20 feet	20 feet	N/A

<b>RE-1 Zone (MPDU)</b>	<b>Allowed / Required (SFD)</b>	<b>Allowed / Required (Townhouse)</b>	<b>Proposed for Approval (SFD)</b>	<b>Proposed for Approval (Townhouse)</b>
Property not Included in Application				
Rear Setback, Alley	4 feet	4 feet	4 feet	4 feet
<b>Height</b>				
Principal Building Height (max.)	40 feet	40 feet	40 feet	40 feet
<b>MPDUs</b>	12.5% (6 DUs)	12.5% (6 DUs)	12.5% (6 DUs)	12.5% (6 DUs)
<b>Site Plan Required</b>	Yes	Yes	Yes	Yes

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

The subject property is designated as Rural Residential in the Generalized Land Use Plan of the 1994 *Clarksburg Master Plan* and recommended for the RE-1 (Single-Family Detached) zone. With a density of one dwelling unit per acre, the proposed Preliminary Plan is consistent with this planned land use density and the Subject Property’s existing RE-1 zone.

Situated at the headwaters of the Little Seneca Creek watershed, environmental protection of forested landscapes and stream water quality is an important consideration for the proposed subdivision. The proposed subdivision is in an upland area, north of the headwaters to Little Seneca Creek, therefore avoiding most impacts to the stream valley. Stormwater management should be incorporated into the site design for the proposed subdivision to ensure that water flowing into Little Seneca Creek is effectively managed for quantity and quality (*Clarksburg Master Plan*, p. 145-147).

A planned public park and greenway/bikeway is recommended in the 1994 *Clarksburg Master Plan* to provide a publicly accessible trail connection between Ovid Hazen Wells Park and Damascus Recreational Park (p. 72). The planned corridor runs through a portion of the Subject Property that is not proposed for development, along the small stream valley of Little Seneca Creek, east of Ridge Road. While the greenway connection is not recommended for dedication or construction as a part of this application, its viability should be preserved as a future connection along the stream valley to the south of the proposed subdivision and an easterly park and greenway trail connection to Kings Valley Road and Damascus Recreational Park as part of any future proposed subdivision or development application south of the current development proposal.

# Ridge Road Transition Area

Figure 28

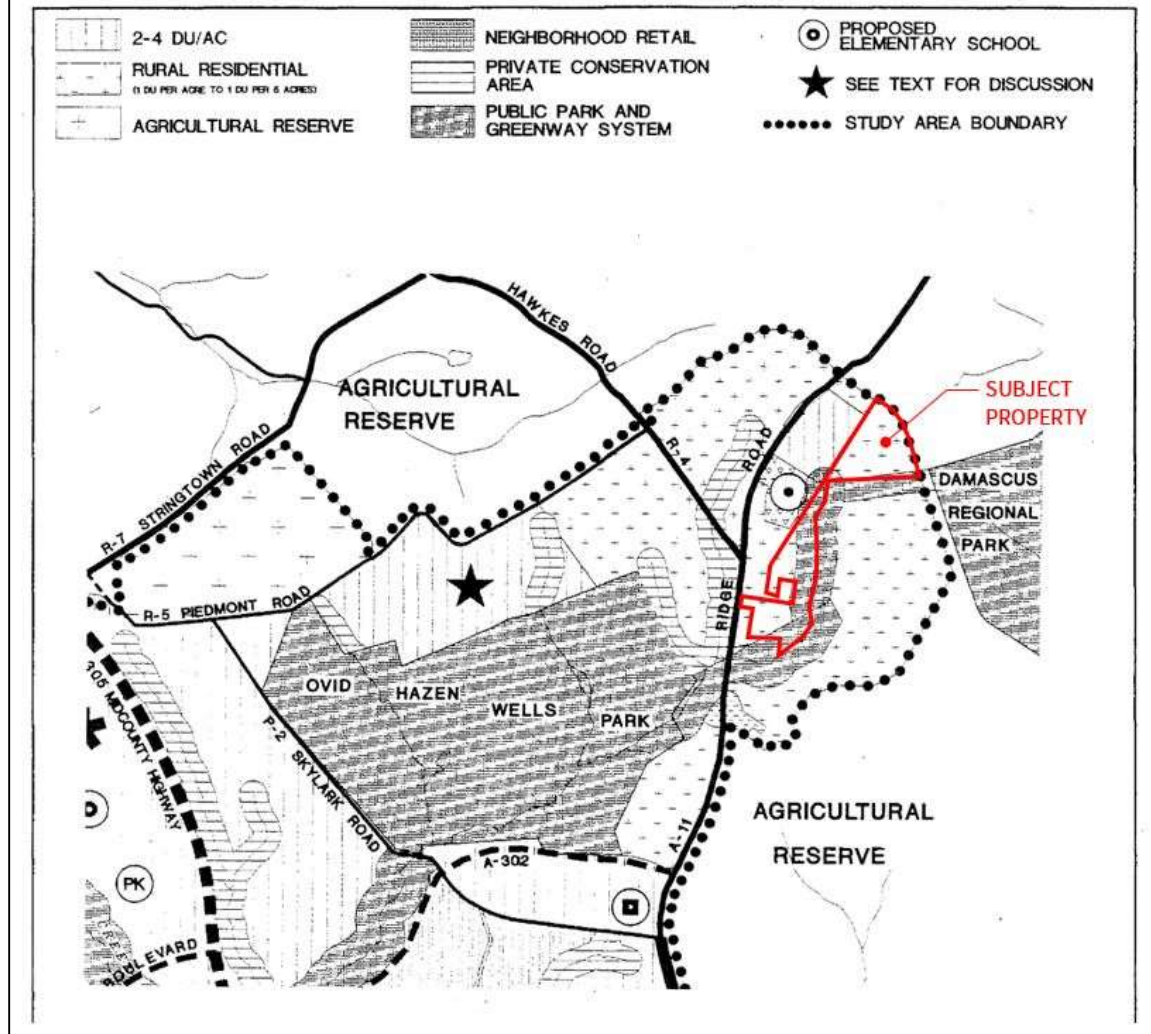


Figure 7 – Subject Property Location within the Master Plan Area

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

#### a) Roads and other Transportation Facilities

- i. **Existing Facilities** Kings Valley Road is an unclassified residential street with 30 feet of existing right-of-way (“ROW”). There are no bike or pedestrian facilities on the road. Hoffman Drive is a neighborhood street with a 60-foot ROW. There are no bike or pedestrian facilities on the road.
- ii. **Proposed public transportation infrastructure** An 8-foot-wide asphalt sidepath will be constructed along the frontage with Kings Valley Road. An additional 25 feet of ROW will be dedicated from the centerline, along with an additional 10 foot wide Public Utility Easement, to provide 55 feet of ROW and 65 feet of publicly usable space,

in compliance with Section 49-32. This will accommodate all planned public facilities. Hoffman Drive will be extended into the property from the west as a neighborhood street with a 60-foot ROW. All roads will be constructed with closed section curb and gutter drainage. All roads will have six-foot-wide, buffered sidewalks on both sides of the street. In addition to the Hoffman Drive extension, the Application proposes two new public streets. The first will extend to the south through the Property from the intersection of Glade Valley Terrace and Kings Valley Road to the southern property line. The second road will run from the intersection of Preakness Drive and run southwest through the property to the southern property line. Both roads will be constructed as neighborhood streets with a modified 50-foot ROW. The Applicant has requested a waiver from the standard 60 ft ROW required under Ch. 49-32.c.5. as allowed under Ch. 50.4.3.E.2.a.i and ii (Attachment A). Staff recommends approval of the right-of-way waiver request as the reduction of right of way is environmentally preferable and results in better use of the tract under consideration. The reduced width of the ROW will allow dwellings to be placed closer together, which will accommodate a more clustered footprint for the overall development. This will result in turn with a lower environmental footprint, allowing the development to remain well outside existing forest and stream valleys, and accommodates a more efficient overall site layout. In determining the width of a less than standard ROW, the Board must consider:

- (a) *the recommendations of the Department of Transportation or other applicable state or municipality transportation permitting agency;*

MCDOT in their letter dated October 24, 2023, approves the waiver request.

- (b) the amount of traffic expected to use the proposed roads;

The proposed roads are not expected to serve through traffic; they will predominantly serve the 44 dwellings, which will be served adequately by the proposed roads.

- (c) the maximum road right-of-way or improvement required for the proposed land use; and

Ch. 49 recommends a 60-foot ROW for neighborhood streets; the reduction of 10 feet will accommodate an overall tighter, more concentrated development envelope, limiting overall environmental impacts.

- (c) the increased traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road.



As mentioned, these roads will be able to accommodate all proposed development. For the most part, as conditioned to include an extension of the northern alleyway, proposed public roads will predominantly provide vehicular access via driveways on only one side, significantly reducing potential conflict points. Limited additional future development is anticipated in the Master Plan for this area; limited future growth of vehicular traffic is expected.

- iii. *Proposed private transportation infrastructure*** Two private alleys are proposed to provide rear access for garage parking. Pedestrian access to these units will be provided along the front facing street or along the fronts of units facing public open space. As conditioned, the alley serving rear vehicular access to units 2, 3, 4, 9, 20, 11, 12 will be extended through the block to serve units 5, 6, 7 as well. This will allow through movement across the alley from north to south without the need for vehicles to turn around, improving circulation and access. Additionally, the relocation of driveways for these units to the alley simplifies access along the proposed public streets and removes potential conflict points, particularly for Unit 5 which as proposed places the driveway in the active area for the proposed intersection with Hoffman Drive. Staff's support of the Applicant's waiver request for the reduction in minimum ROW as explained above assumes the extension of the alleyway which results in an overall simplification of access.

Additionally, as conditioned, the Applicant must provide a paved trail connection in the southern portion of the Application to connect from the sidewalk fronting proposed lot 35 to the proposed sidewalk along Kings Valley Road.



Figure 8 – Location of Path Connection to Kings Valley Road

This paved connection will replace the Applicant’s proposed natural surface trail and accommodate a more direct southern connection to Kings Valley Road and Damascus Recreational Park to the south. This proposed connection will save residents up to 1,000 feet of walking distance, or roughly 3-4 minutes of walking time (yellow line in image) versus walking up to the proposed Preakness Drive intersection and back south. However, the significant regrading of the site as proposed will result in a more challenging topography to accommodate this connection. The filling of the portion of the Site to the east Lot 35 steepens the existing hillside grade significantly, dropping 40 feet in height in a 200-foot run, a 20% average slope. To accommodate this grade change, Staff is willing to accept a non-ADA connection with up to an average 10% grade. After consideration, an ADA connection is not recommended; such a connection would require at least 800 feet of run to accommodate an ADA acceptable 5% grade, requiring multiple switchbacks. Such a design would negate most time and distance savings. ADA connectivity to Kings Valley Road will be accommodated along the proposed public street network.

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

The Application proposed to construct 38 single family detached residential lot and 6 townhouses. This is estimated to generate 53 total peak hour person trips in the morning and 67 total peak hour person trips in the evening. As a result of the estimated transportation impact, the Project submitted a Transportation Impact Study with the Preliminary Plan to satisfy the Local Area Transportation Review (LATR).

*Table 2: Trip Generation Analysis – Tregoning Property*

		ITE Trip Generation Vehicle Rates		Adjusted Vehicle Rates Rural East Policy Area		Total Person Trips	
		AM	PM	AM	PM	AM	PM
Proposed	38 Single Family Detached Residential Units	31	40	31	40	49	62
	6 Townhouses	3	3	3	3	4	5
Net Change						53	67

Source: Transportation Exemption Statement from The Traffic Group, Inc., May 5, 2023, modified by staff

#### Travel Mode Adequacy Test

The 2020-2024 *Growth and Infrastructure Policy* requires evaluation of all transportation modes, including: auto-drive, transit, walking and biking. Mode-specific adequacy tests are required for any project estimated to generate 50 or more net new peak hour person trips.

- The Application is exempt from transit system adequacy evaluation as the property lies within a green policy area.
- Vehicular adequacy was studied in within a 1 signal tier, with four intersections studied (Table 3). All intersections were found to be within the Rural East policy area CLV threshold of 1350. No mitigation for vehicular congestion is required of this application.

*Table 3: CLV Methodology*

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Rural East Policy Area (CLV Standard 1350)</i>						
MD 27 & Kings Valley Road	1157	1217	1167	1228	1187	1271
MD 27 & Hoffman Drive	1113	1055	1123	1066	1143	1088
Kings Valley Road & Glade Valley Terrace / Site Access	112	157	112	157	137	192
Kings Valley Road & Preakness Drive / Site Access	134	176	134	176	146	197

- A speed study was conducted along the property frontage on Kings Valley Road. 85<sup>th</sup> percentile speeds were found to be 38 mph in both directions, significantly exceeding the posted 25 mph speed. These speeds are hazardous to bike and pedestrian road users; this suggests additional enforcement and traffic calming measures should be conducted in the vicinity.
- Pedestrian system adequacy was evaluated within 250 feet of the Property. Mitigation will be required to achieve a Pedestrian Level of Comfort (PLOC) greater than 2 (Somewhat Comfortable), and/or deficiencies identified for streetlamps within the scoped boundary. The LATR requires evaluation on Primary Residential Roads and higher but excludes residential roadways. The Pedestrian system adequacy also requires mitigation for ADA deficiencies identified within 125 feet of the Property. Significant deficiencies were found on all public roads as there is no pedestrian infrastructure withing the study area; as these roads are classified as residential streets, with expected slower speeds and lower vehicular traffic, by default they are listed as “uncomfortable”. Given the high (38 mph) vehicular speeds found on Kings Valley Road, which significantly exceed posted speeds, and in combination with limited sight distance in areas, actual experienced PLOC is more properly found to be undesirable and potentially hazardous. A sidepath constructed along the property frontage will help address this condition.

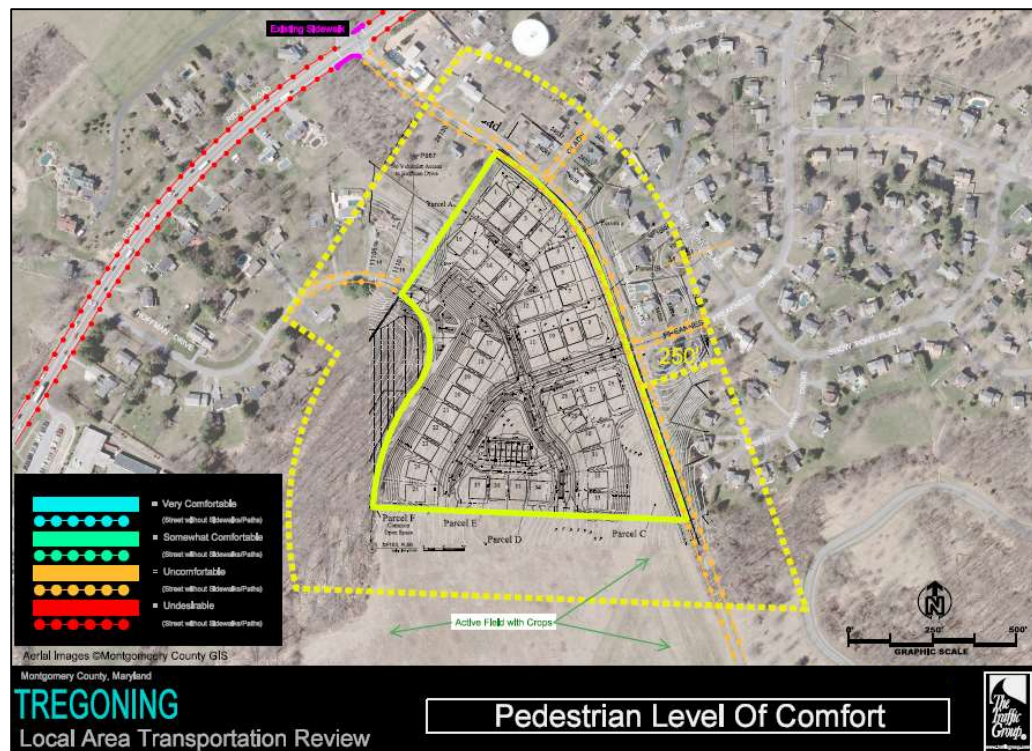


Figure 9 – Study Area Map for Pedestrian Level of Comfort



- Bicycle system adequacy was evaluated by analyzing bikeways within 250 feet of the Property. Mitigation will be required to achieve a Level of Traffic Stress 2 (LTS-2) or lower, consistent with the Bicycle Master Plan. As with the pedestrian adequacy study, no bicycle infrastructure exists in the study area, but due to the low speed and low vehicular volumes of study are residential streets, LTS adequacy was found to be either low or very low stress. However, given the high (38 mph) vehicular speeds found on Kings Valley Road, which significantly exceed posted speeds, and in combination with limited sight distance in areas, actual experienced LTS is more properly found to be high. A sidepath constructed along the property frontage will help address this condition.

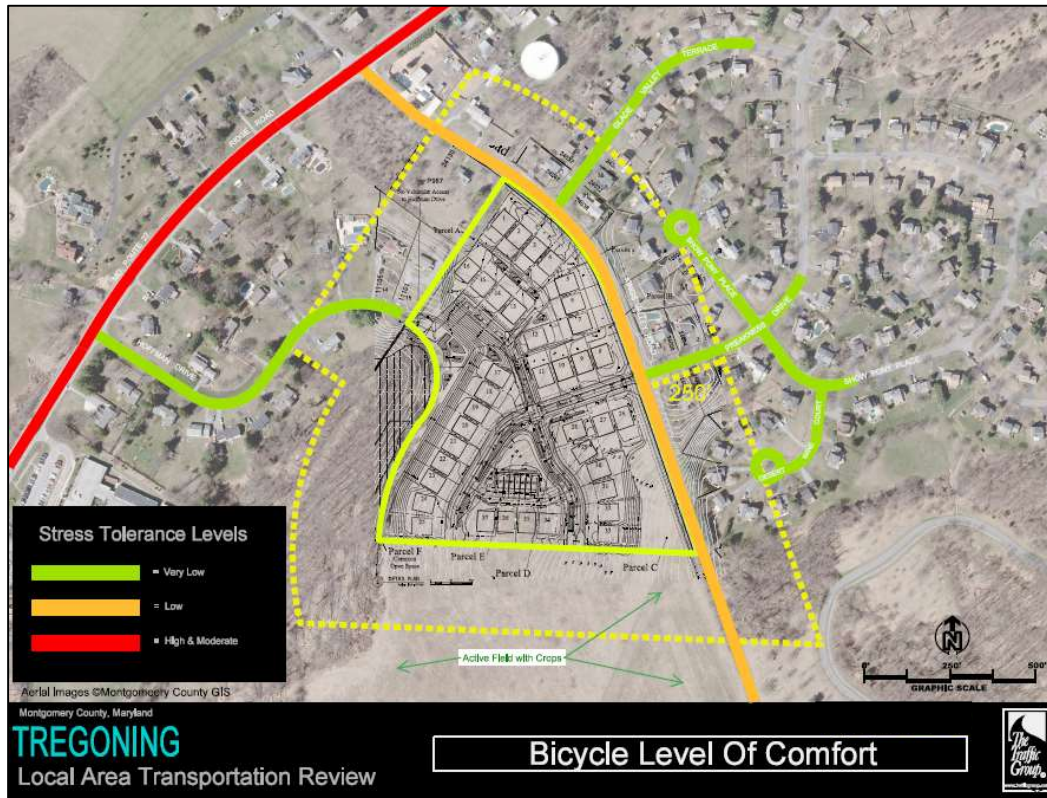


Figure 10 – Study Area Map for Bicycle Level of Traffic Stress

### Proportionality Guide

Under Section 8 of 2022 *Local Area Transportation Review Guidelines* (LATR Proportionality Guide), the maximum cost of mitigation improvements the Applicant is required to construct or fund for a project consisting of 44 residential units is not to exceed \$190,434 (see calculation below).

$$\text{LATR Proportionality Guide} = (\text{Extent of Development}) (\text{LATR Proportionality Guide Rate}) (\text{LATR Proportionality Guide Adjustment Factor})$$



\$190,434 = (38 Single Family Detached homes) (\$20,173) (22%) + (6 Single Attached homes) (\$16,506) (22%)

As the date of writing of the Staff report, the Applicant has not studied or provided options for required off-site mitigation. For expediency, Planning Staff has coordinated with SHA, MCDOT and MCDPS to explore an adequate option for off-site mitigation improvement. Six options were explored: (1) extending sidepath to the north on Kings Valley Road; (2) building sidewalk on Glade Valley terrace; (3) building sidewalk on Preakness Drive; (4) extending sidepath to the south on Kings Valley Road; (5) extending sidewalk on Hoffman Drive; and (6) extending sidewalk along Ridge Road to connect Cedar Grove Elementary School. The first five options outlined above are not preferred as they do not tie into a larger network, at best would provide connectivity to five to eight existing residences, which would therefore would not provide much value until additional connections are made in the future. Additionally, grade and limited ROW appear to limit the feasibility of implementation of these options.

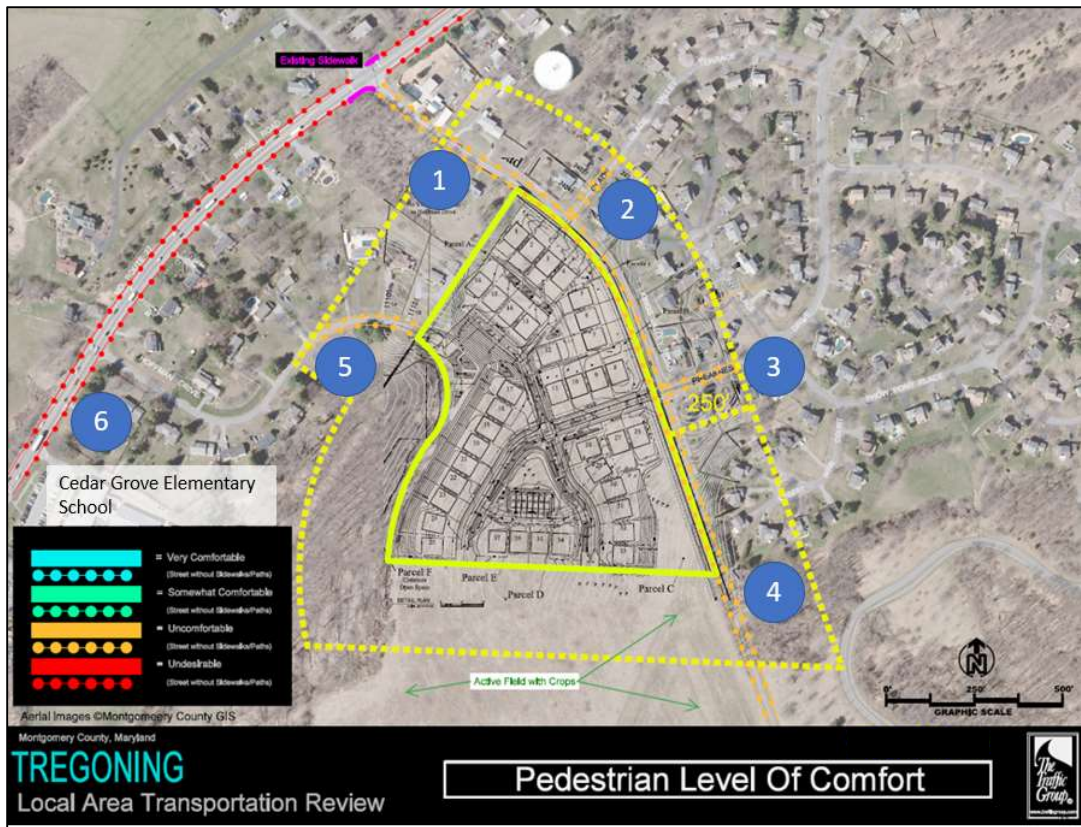


Figure 11 – Explored Off-site Pedestrian Mitigation Options Overlaid on Pedestrian Level of Comfort Map

In lieu of the first 5 options, Staff has conditioned option 6, the construction of approximately 360 feet of sidewalk along Ridge Road to connect Cedar Grove Elementary School to Hoffman Drive to the north (Figures 11 and 12).



*Figure 12 – Off Site Sidewalk Improvement*

This improvement, while outside the 250’ Pedestrian Adequacy study area, would provide clear and immediate benefit to pedestrian access to the school. As shown in Figs. 12 and 13, the school fronts Ridge Road, a high-speed, heavily trafficked Country Connector with no bike or pedestrian improvements. It is therefore identified as having the lowest possible pedestrian level of comfort rating of “undesirable”.

The sidewalk connection as conditioned would provide a section of very comfortable pedestrian connection to link the school to Hoffman Drive, a residential street (Figs. 12 and 13).



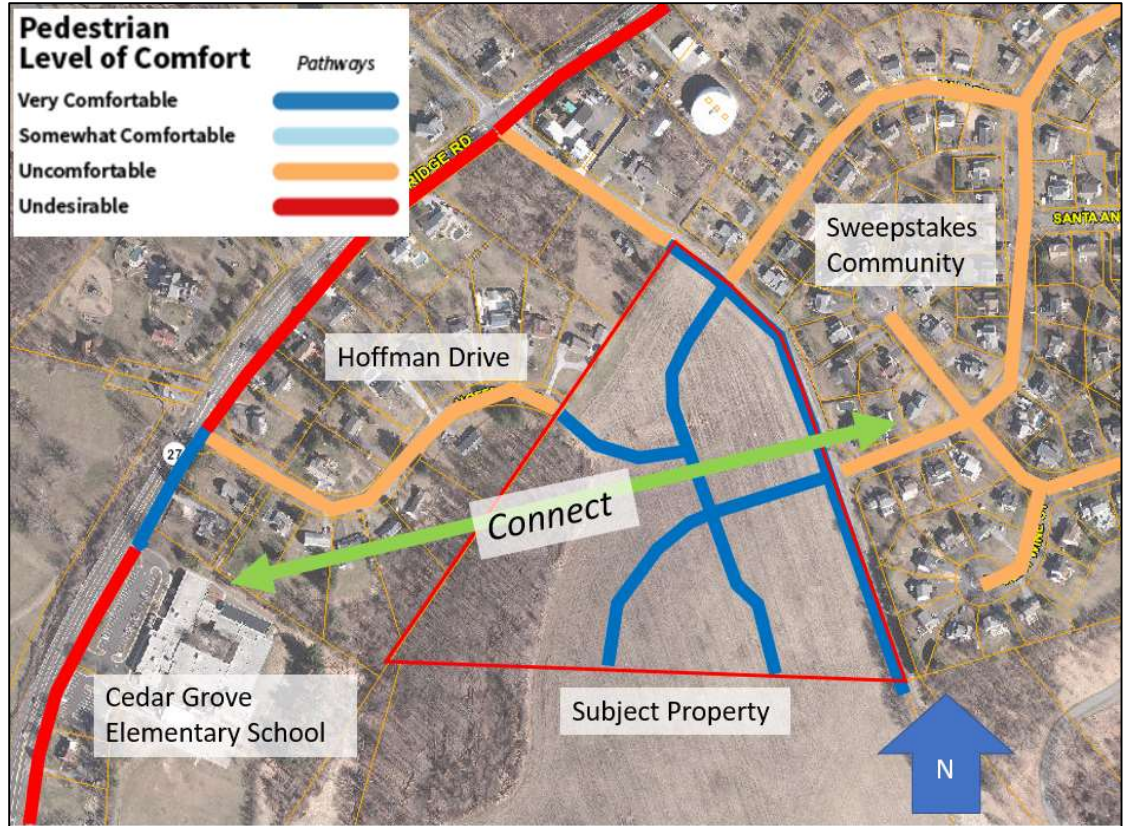
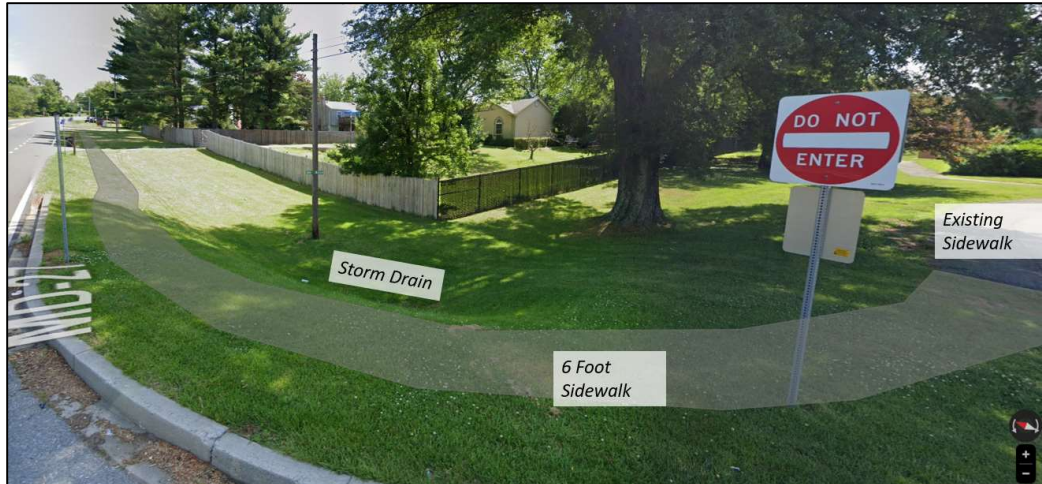


Figure 13- Future Pedestrian Level of Comfort

While Hoffman Drive would remain rated an “uncomfortable” pedestrian level of comfort due to the lack of sidewalk, the low volume and speed of vehicles in the future would accommodate some pedestrian connectivity. In conjunction with the proposed new network of streets as part of the Application, which among other things would connect Hoffman Drive to Kings Valley Road, this sidewalk connection would accommodate a burgeoning pedestrian link between the school, the Hoffman Drive community, the Application community, and the greater Sweepstakes community benefiting hundreds of residents.



*Figure 14– Proposed Ridge Road Sidewalk Looking North*

The area of the proposed sidewalk is generally flat with few notable obstructions. A stormwater swale occupies much of the space, requiring some limited regrading. An existing storm drain and supporting grading is one notable obstacle immediately adjacent to the existing school entrance.

Facility design is beyond the scope of the Planning Department. As noted, at the time of writing the Staff Report, no design for any offsite mitigation improvement has been provided by the Applicant. The Applicant similarly has not provided any cost estimate for any offsite mitigation improvement. Without this basic information, it is impossible for Staff to provide an itemized cost estimate for this improvement. However, Staff believes the improvement is proportional to the impact of the proposed application, which yields 53 AM and 67 PM peak hour person trips. Additionally, average countywide costs for such improvements have been estimated as roughly \$300 per linear foot. Based on this figure, Staff’s best estimated cost for the improvement is roughly \$108,000, comfortably below the \$190,434 proportionality cap for the application.

As conditioned, all off-site mitigation projects must be permitted, bonded for construction, and all mitigation payments must be paid before the issuance of the first building permit. Montgomery County Planning, MCDOT, and MDOT SHA staff reviewed the TIS and approved the offsite mitigation project. Therefore, the Applicant has satisfied the requirements of the LATR, and the public transportation facilities are adequate for the Site.

### **c) Schools**

#### **Overview and Applicable School Test**

The FY24 Annual School Test, approved by the Planning Board on June 15, 2023, and effective July 1, 2023, is applicable to this Preliminary Plan. This Preliminary Plan proposes a net total of 44 dwelling

units, comprised of thirty-eight single-family detached dwelling units and six townhouse dwelling units.

### School Adequacy Test

The Preliminary Plan is served by Lois P. Rockwell ES, John T. Baker MS, and Damascus HS. Based on the FY24 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

*Table 4 - Applicable FY2024 School Adequacy*

School	Projected School Totals, 2027				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus / Deficit		Tier 1	Tier 2	Tier 3
Lois P. Rockwell ES	548	528	96.4%	+20	No UPP	105	130	212
John T. Baker MS	762	832	109.2%	-70	No UPP	56	83	197
Damascus HS	2,250	1,533	68.1%	+717	No UPP	897	1,167	1,505

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school’s adequacy status and ceilings, as determined in the Annual School Test. **Under the FY24 Annual School Test, Lois P. Rockwell ES, John T. Baker MS, and Damascus HS do not require any UPP.** If the Preliminary Plan is estimated to generate more students than the identified ceilings, then UPPs or partial payments at multiple tiers may still be required.

### Calculation of Student Enrollment Impacts

To calculate the number of students generated by the Preliminary Plan, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 44 units that are not age-restricted, the Preliminary Plan is estimated to generate the following number of students based on the Preliminary Plan’s location within a Turnover Impact Area:

*Table 5 - Estimated Student Enrollment Impacts*

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	38	0.185	7.030	0.102	3.876	0.154	5.852
SF Attached	6	0.218	1.308	0.119	0.714	0.167	1.002
MF Low-rise	0	0.116	0.000	0.061	0.000	0.081	0.000
MF High-rise	0	0.073	0.000	0.042	0.000	0.053	0.000
<b>TOTALS</b>	<b>44</b>		<b>8</b>		<b>4</b>		<b>6</b>



As shown in Table 5, on average, this Preliminary Plan is estimated to generate 8 elementary school students, 4 middle school students, and 6 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 4, therefore no additional UPPs are required, nor partial payments across multiple UPP tiers.

**d) Other Public Facilities and Services**

Other public facilities and services are available and adequate to serve the proposed residential lots. As conditioned, the Subject Property will maintain W-5 and S-5 water and sewer service categories until final Planning Board approval of a Preliminary Plan that uses either a cluster or MPDU development option under the RE-1 Zone, after which it will be changed to W-3 and S-3 water and sewer service categories. The Application is proposed as MPDU Optional Method within the RE-1 Zone and meets the conditions from Montgomery County Resolution 18-1272 (Attachment K).

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Department Access Plan was approved on [TBD]. The Fire Department Access Plan indicates that fire access will be provided by a combination of new public streets.

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 Growth and Instructure Policy (GIP) in effect at the time that the Preliminary Plan was accepted.

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

The Preliminary Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Please refer to Section 7 below for the analysis and findings for the Preliminary Forest Conservation Plan.

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

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on October 30, 2023 (Attachment E). The Application will meet stormwater management goals through the use of micro-bioretenment and a bioswale.

**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.**

There is no evidence, actual notice, or constructive notice of a burial site within the Preliminary Plan. The Property is not included in the Montgomery County Inventory.

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

There are no other applicable provisions specific to the Preliminary Plan that are necessary for approval of this Application.

## **SECTION 7: PRELIMINARY FOREST CONSERVATION PLAN F20230420 ANALYSIS AND FINDINGS**

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 PFCP 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 in the Staff Report, and described below.

### **FOREST CONSERVATION**

#### **Natural Resource Inventory/Forest Stand Delineation Plan**

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420220450 for this Property was approved on December 15, 2021. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is comprised of two properties, Parcel 104 and Parcel 617, totally 37.6 acres. The Subject Property is located within the Seneca Creek watershed, classified as a Use Class IV-P by the State of Maryland. The Subject Property contains 2.95 acres of forest on Parcel 104 while Parcel 617 has no forest cover. In addition, there are numerous specimen trees within areas of forest and along the stream buffer both on-site and adjacent to the Subject Property that have a diameter breast height (“DHB”) of 30 inches or more. The Subject Property also contains a perennial stream with numerous wetlands, 2.80 acres of floodplain and 8.77 acres of stream valley buffer.

#### **Forest Conservation Plan**

The Applicant has submitted a Preliminary Forest Conservation Plan No. F20230420 (“PFCP”) for concurrent review with the development plan application for a Preliminary Plan of Subdivision No. 120230120 (Attachment J). Residential development is occurring only on Parcel 104. While Parcel 617 is part of the overall application, it is only being included to transfer residential density to Parcel 104. The Application retains the development rights for 2 market rate units on Parcel 617 for future development. 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-1 and is assigned a Land Use Category of Cluster Medium Density Residential (“CDR”) 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 20% and a conservation threshold of 45% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the Total Tract Area plus 0.38 acres of offsite disturbance associated with this Application and minus 1.24 acres of land dedication for rights-of-way, for a total net tract area of 36.99 acres. There is a total of 2.95 acres of existing forest on the Subject Property with the Applicant proposing to remove 0.14 acres of forest. This results in a total afforestation/reforestation requirement of 4.57 acres within the same watershed/Priority Area or 4.64 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement by reforesting the 6.93 acres of unforested stream valley buffer as required under Sec. 22A-12(e)(1)(B) of the Forest Conservation Law (Figures 15 and 16).

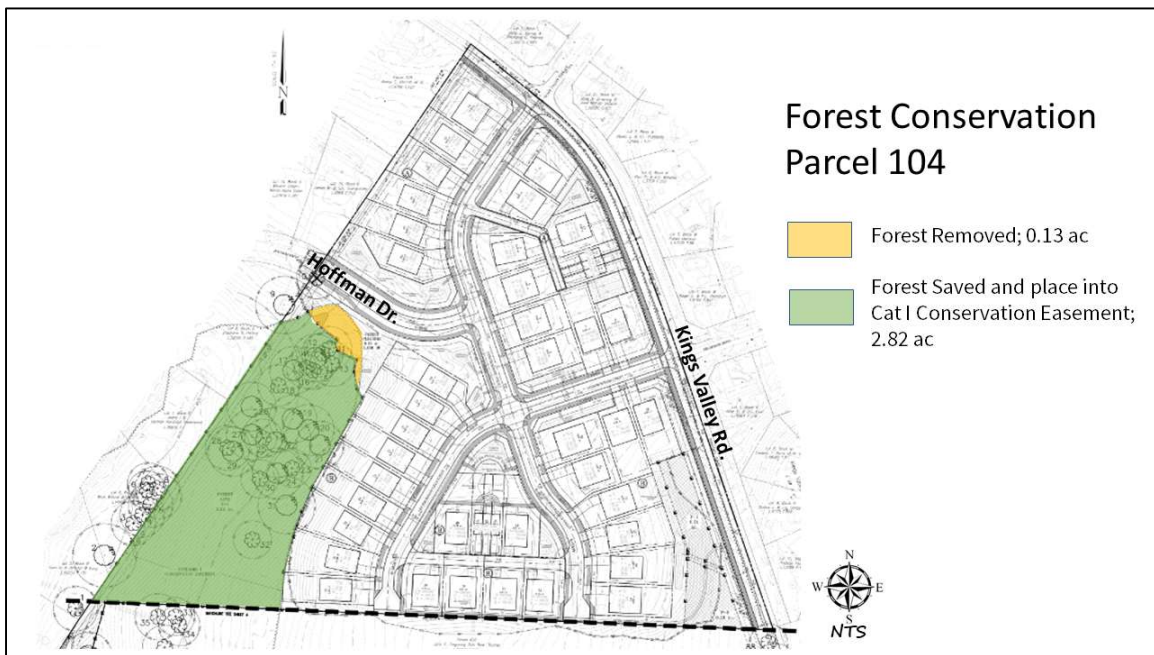


Figure 15 – Forest Conservation Parcel 104

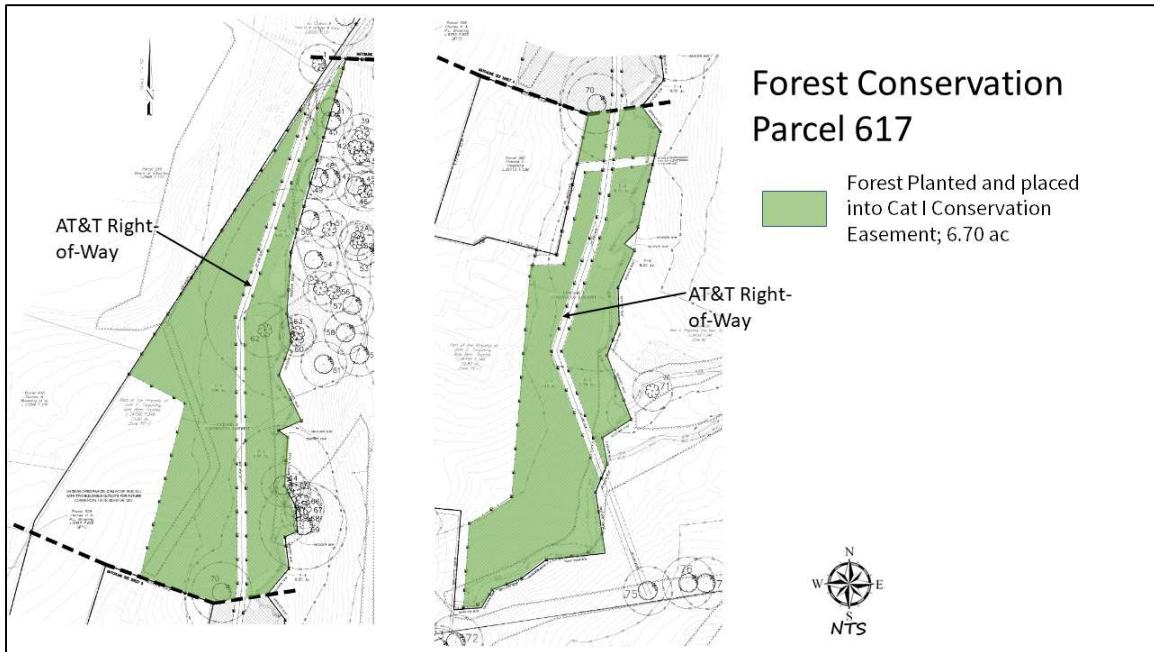


Figure 16 – Forest Conservation Parcel 617

### Minimum Forest Retention

Section 22A-12(f) of Montgomery County Code, Chapter 22A, the Forest Conservation Law (“FCL”), in general, states there are special provisions for minimum retention, reforestation and afforestation on any site developed under a cluster or other optional method of development in a one-family residential zone must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement. Forest retention should be maximized where possible. This site is being developed under an optional method and is located within a one-family residential zone, RE-1. As such, 22A-12(f) would be applicable to this development site.

22A-12(f)(2)(B) states, in part, that *“In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).”* And in 22A-12(f)(2)(C), *“On a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.”*

Under the applicable sections of 22A-12(f), the Applicant’s minimum on-site forest requirement would be 7.28 acres since the existing forest of 2.95 acres is less than the Afforestation Threshold specified in the PFCP worksheet. Under this section of the FCL, the Applicant would be required to retain all the existing on-site forest of 2.95 acres and then plant an additional 4.33 acres bringing the total reforestation up to the afforestation threshold of 7.28 acres.

The PFCP proposes a small amount of existing forest removal for the installation of Hoffman Drive. Due to site grading and the required alignment of Hoffman Drive, approximately 0.13 acres of existing forest will need to be removed. The extension of Hoffman Drive through the Subject Property was approved by the Planning Board with Pre-Preliminary Plan No. 720220020 and the proposed alignment is supported by both Montgomery County Planning Staff (“Staff”) and the Montgomery County Department of Transportation (“MCDOT”). These regulatory actions for the connection of Hoffman Drive and the construction requirements to install this roadway require the removal of a small amount of the existing forest on the Subject Property.

In order for the 0.13 acres of existing forest to be removed and the PFCP to be approved, the Planning Board must find that retention of this forest is not possible. Section 22A-12(f)(3) states that: *“If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.”*

It is not possible for the Applicant to retain all of the 2.95 acres of existing forest on the Subject Property and satisfy the regulatory requirements for this development. The Applicant is providing the maximum possible on-site forest retention by protecting the remaining balance of the 2.82 acres of existing forest. In addition, the Applicant is providing 6.93 acres of reforestation within the unforested stream valley buffer on Parcel 617.

#### Forest Conservation Easement Relocation

The Applicant has proposed to provide reforestation plantings within two small areas along Kings Valley Road, areas P-1 and P-2, and place these areas into Category I Conservation Easements (Figure 17). Each area is 50-ft wide and just over the minimum required area measurement of 10,000 square feet as specified under Sec. 22A.00.01.08.E(1) which states that afforestation and reforestation areas must be at least 10,000 square feet in size and 50-feet wide or be adjacent to a larger forest, either on-site or off-site, which is protected. These proposed areas would also be isolated standalone easement areas that are not adjacent to any larger forested areas. The Applicant is also proposing a 4-ft wide natural surface trail that leads from the nearby cul-de-sac, passes through reforestation areas P-1 and P-2, and connects to the proposed sidewalk along Kings Valley Drive.

As conditioned, reforestation areas P-1 and P-2 should not be placed into Category I Conservation Easements. Primarily, because these areas are not necessary for the Applicant to meet the reforestation requirement under the PFCP Worksheets. The Applicant’s reforestation requirement under the PFCP Worksheets is 4.71 acres. The Applicant is meeting this requirement by reforesting 6.93 acres of unforested stream valley buffer on Parcel 617. Reforestation Areas P-1 and P-2 are in excess of the reforestation requirement and as such do not require long term protection with Category I Conservation Easements. Secondly, Areas P-1 and P-2 are isolated, standalone areas that are not adjacent to existing Category I Conservation Easements or in environmentally sensitive areas such as



stream or wetlands. These small, isolated conservation easement areas have historically proven to be difficult to enforce with likely encroachments into the easements resulting in violations.

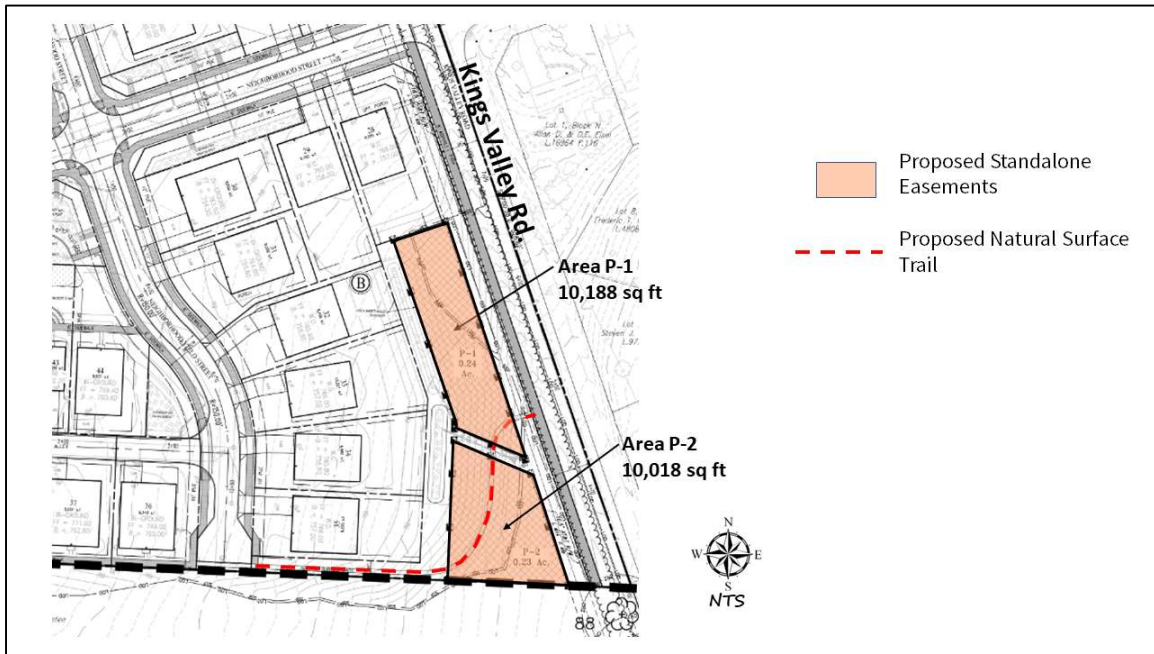


Figure 17 – Proposed Conservation Easements to be Removed

### Sewer Alignments and Stream Valley Buffer Encroachments

The Applicant is currently showing on the PFCP two 20-foot-wide possible sewer easements bisecting the stream and stream valley buffer on Parcel 617 (Figure 18). These areas are called out by note on the PFCP saying they are “Future 20’ sewer easement. Location to be determined at a future date.” Staff understands that these were placed on the PFCP in order to address the requirements under Montgomery County Resolution 18-1272 (Attachment K) dated October 30, 2018 addressing a Water and Sewer Category Change for Parcel 617. However, the Resolution does not set the sewer alignment as shown on the PFCP. The Resolution states “Maintain W-5 and S-5, with final approval of W-1 and S-3 conditioned on the Hearing Examiner’s approval of a conditional land use under the RE-1 Zone for the elder care facility.” In relation to the alignment, the Resolution states “The alignment and construction of the low-pressure sewer main for the elder-care facility project site, between the southwest corner of the site and the residential development at the northern end, will be evaluated through the development plan review. This alignment will need to minimize impacts to wooded areas and to streams and stream buffers, especially within proposed park dedication areas.”

To date, no development plans have been submitted for Parcel 617. This current Application involves Parcel 617 only to the extent that all but two density units associated with this parcel are being transferred to Parcel 104. In addition, the note on the PFCP implies that the location of the sewer alignment will change in the future once development plans are created for Parcel 617.

Showing the possible future sewer alignments on the PFCP is premature and that the true alignment can only be accurately determined once a Conditional Use application has been approved by the Hearing Examiner and a development plan is submitted for Parcel 617. Only at that time can the alignment be set, the impacts to the stream and stream valley buffer be analyzed and those impacts reduced as much as possible as required under Resolution 18-1272. As a result, Staff recommends that the 20-ft wide sewer easement alignments be removed from the PFCP and to be shown on the future development plan for Parcel 617.

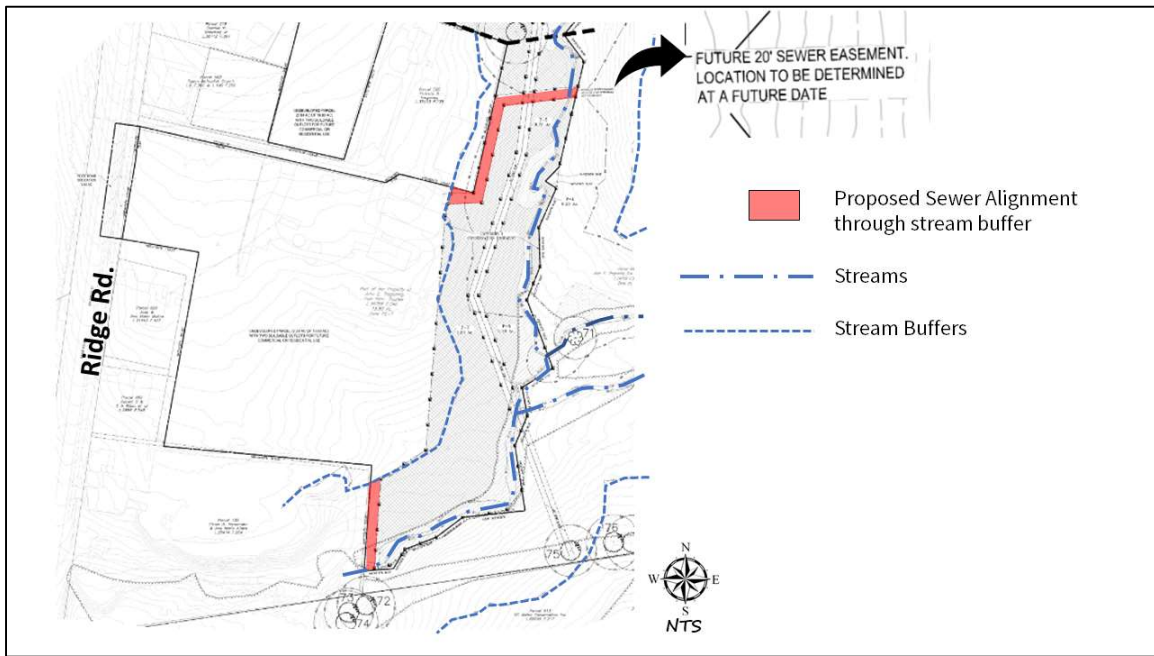


Figure 18 – Sewer Alignments

### 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 August 22, 2023 (Attachment L). The Applicant proposes to impact four (4) 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 (Table ).

Table 6 – Protected Trees to be Impacted

<b>Protected Trees Table</b>						
<b>Tree Number</b>	<b>Botanical Name</b>	<b>Common Name</b>	<b>Size DBH</b>	<b>Tree Condition</b>	<b>% CRZ Impacted</b>	<b>Status</b>
9	<i>Quercus montana</i>	Chestnut Oak	36”	Good	5%	Retain; impacts only; off-site tree
14	<i>Liriodendron tulipifera</i>	Tulip Poplar	30”	Good	1%	Retain; impacts only
21	<i>Acer rubrum</i>	Red Maple	30”	Good	9%	Retain; impacts only
31	<i>Liriodendron tulipifera</i>	Tulip Poplar	36”	Good	12%	Retain; impacts only

## 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 their property. The Subject Property is 17.81 acres located in the RE-1 zone. A reasonable and significant use of the property would be the expectation to be able to subdivide the property into multiple residential lots pending compliance with all other applicable laws and ordinances. In this case, the unwarranted hardship is caused by the combination of the necessary layout of the proposed development on the Subject Property which is dictated by the existing site conditions, development standards of the zone and Montgomery County agency requirements combined with the location of the Protected Trees.

The 4 Protected Trees proposed to be impacted are located in close proximity to the LOD of the development (Figure 19). Three of these trees are within, but near the perimeter, of the existing forest cover on Parcel 104. The fourth tree, Tree 9, is located off-site on an adjacent property, but near Hoffman Drive. Trees 9 and 14 will be impacted by the necessary site grading for the installation of Hoffman Drive on the Subject Property. Trees 21 and 31 are located near the perimeter of the existing forest cover and will be impacted by the LOD for site grading for 5 residential lots, Lots 22-26 of Block B.

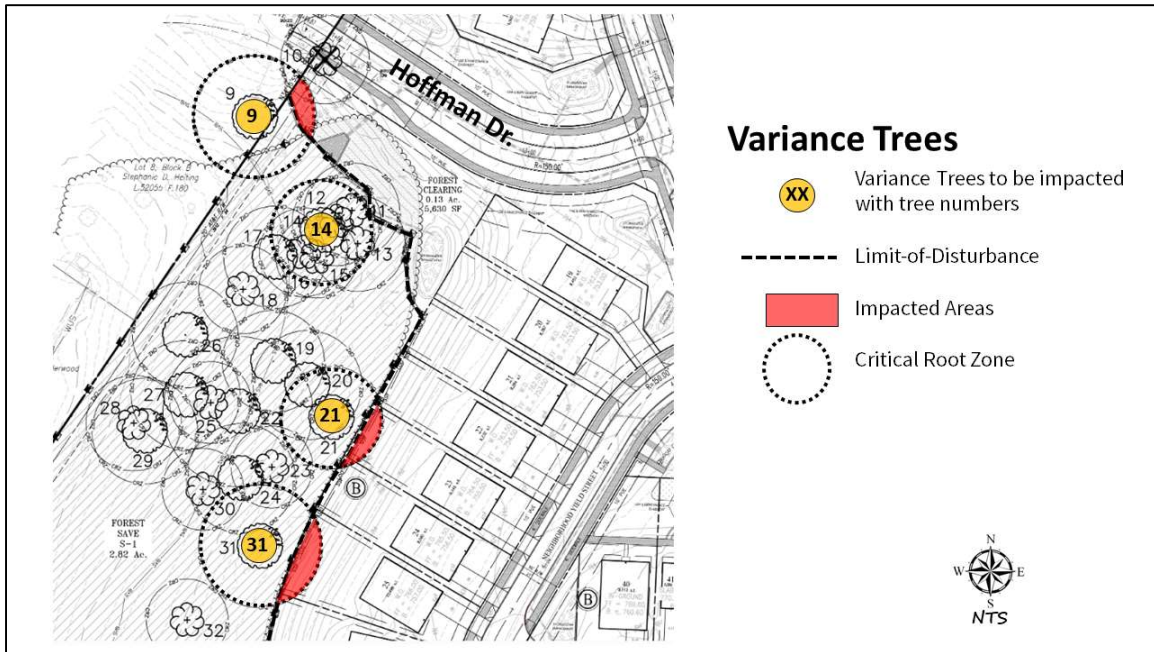


Figure 19 – Variance Trees

The inability to impact these 4 Protected Trees would prevent the installation of Hoffman Drive thereby denying necessary access to the site that is required by Montgomery County. It would also likely prevent the development of Lots 23-25 and impact the development of Lots 22 and 26 by limiting the area for site grading to create level pad areas for these lots. As a result, this would deny access to the site and would 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 entirety of the Property for the development of single-family homes allowed under the RE-1 zone, 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.

### 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 impacts to the 4 trees are due to the development of the Property, location of the trees in proximity to the limits-of-disturbance (“LOD”) and necessary site design requirements for this residential development. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting of this variance is not a special privilege that granted only this Applicant and 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.

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

**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 impacted are not located within a stream buffer, wetland or Special Protection Area. These trees being impacted are fully expected to recover and to continue providing the ecological and water quality functions that may be initially reduced by the impacts of the Protected 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 is some disturbance within the CRZ of 4 trees. However, the impacts to these trees are minor ranging from 1% up to 12% CRZ impacts and they will receive adequate tree protection measures. These trees are expected to fully recover and continue to provide all the environmental benefits currently offered. Therefore, no mitigation is recommended for trees that are impacted but retained.

#### Recommendation on the Variance

Staff recommends approval of the variance request.

## SECTION 8: CONCLUSION

The Preliminary Plan complies with the general requirements and findings of the Zoning Ordinance and Subdivision Regulations. The Preliminary Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Therefore, as conditioned, Staff recommends approval of Preliminary Plan No. 120230120 and Preliminary Forest Conservation Plan No. F20230420 with the conditions as specified at the beginning of this report.



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## ATTACHMENTS

*Attachment A: Statement of Justification*

*Attachment B: Preliminary Plan Composite*

*Attachment C: MCPB Resolution No. 23-018 (Pre-Preliminary Plan No. 720220020)*

*Attachment D: MCDOT Approval, October 24, 2023*

*Attachment E: MCDPS Stormwater Management Approval, October 30, 2023*

*Attachment F: MCDPS Fire Department Access and Water Supply Approval, [TBD]*

*Attachment G: DHCA Approval, October 2, 2023*

*Attachment H: MDSHA Approval, September 26, 2023*

*Attachment I: Community Correspondence*

*Attachment J: Preliminary Forest Conservation Plan Composite*

*Attachment K: Montgomery County Council Resolution 18-1272*

*Attachment L: Tree Variance Request Letter, August 2, 2023*

*Attachment M: LATR Transportation*