

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Mailing Date:

November 6, 2023

MCPB No. 23-105
Site Plan No. 820230080
2115 East Jefferson Street
Date of Hearing: October 12, 2023

**This Resolution has been Superseded
by a Corrected Resolution**

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on May 31, 2023, Missing Middle Jefferson LLC (“Applicant”) filed an application for approval of a site plan for the construction of up to 86 new townhouses, including a minimum of 15% MPDUs, for a total of 245,000 square feet of residential use on 5.49 acres of CR-1.5, C-1.5, R-1.0, H-100 zoned-land, located on East Jefferson Street 340 feet south of Josiah Henson Parkway (“Subject Property”), in the 2018 *White Flint 2 Sector Plan* (“Sector Plan”) area; and

WHEREAS, the site plan application for the Subject Property was designated Site Plan No. 820230080, 2115 East Jefferson Street (“Site 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 October 2, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 12, 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 Commissioner Bartley, with a vote of **5-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820230080 for the construction of up to 86 new townhouses, including a minimum of 15% MPDUs, for total of 245,000 square feet of residential use on the Subject Property, subject to the following conditions:¹

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.

Density, Height & Housing

1. Density

The Site Plan is limited to a maximum of 240,000 square feet of total residential uses, for up to 86 townhouse dwelling units.

2. Height

The development is limited to a maximum height of 50 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

Open Space, Facilities and Amenities

3. Common Open Space, Facilities, and Amenities

- a) The Applicant must provide a minimum of 47,000 square feet of common open space (19% of net lot area) on-site.
- b) Before the issuance of the 43rd townhouse final inspection for the residential development, all common open space areas on the Subject Property must be completed.
- c) The natural surface trail must be open to public use before issuance of the final building permit associated with the 86th townhouse.

4. Public Benefits

The Applicant must provide the following public benefits and meet the applicable criteria and requirements of the Zoning Ordinance and the *CR Zone Incentive Density Implementation Guidelines* for each one.

- a) Major Public Facilities – achieved through providing a natural surface trail onsite to connect Luxmanor Elementary School, Green Acres Schools and Luxmanor Local Park.
- b) Transit Proximity – achieved through the Property’s being located between ½ and 1-mile from the White Flint Metrorail (level 1).
- c) Diversity of Uses and Activities:
 - i. Affordable Housing/MPDUs
 - a. The development must provide a minimum of 15 percent MPDUs, or Montgomery County Department of Housing and Community Affairs (DHCA) -approved equivalent, consistent with the requirements of Chapter 25A and the applicable Master Plan. The Applicant is receiving 95 public benefit points for exceeding 12.5 percent MPDUs.

- b. Before issuance of any building permit for any residential unit, the MPDU agreement to build between the Applicant and the DHCA must be executed.
 - c. The Planning Board has reviewed and accepts the recommendations of DHCA in its letter dated September 11, 2023 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by DHCA provided that the amendments do not conflict with other conditions of the Site Plan approval.
- d) Protection and Enhancement of the Natural Environment
- i. Building Lot Terminations (BLTs)

Before issuance of any building permit, the Applicant must provide proof of purchase and/or payment of 0.30 BLTs to the MCDPS and M-NCPPC staff.

5. Common Open Space Covenant

The record plat must reference the Common Open Space Covenant recorded in the Land Records at Book 28045 Page 578 (Covenant).

6. Recreation Facilities

- a) The Applicant must provide the required recreation facilities as shown on the Certified Site Plan (CSP). The CSP must include an exhibit delineating location and detail of recreation facilities, where appropriate, in a manner that is clear and corresponds to the posted surety and maintenance agreement.

Transportation & Circulation

7. Transportation

- a) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated July 28, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in their memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

8. Pedestrian & Bicycle Circulation

- a) The Applicant must provide the following master planned pedestrian and bicycle facilities, the exact location, design and construction of which must comply with requirements of the Montgomery County Department of Transportation, Division of Traffic Engineering and Operations, before right-of-way permit.
 - i. East Jefferson Street: eight-foot-wide (8 ft.) sidewalk with seven-foot-wide (7 ft.) buffer from traffic.

- b) Before the Final building permit associated with the 86th townhouse for the residential development, the Applicant must provide the following master-planned natural surface trails, the exact location, design, and construction of which must be coordinated with the M-NCPPC Montgomery County Department of Parks (Montgomery Parks) and M-NCPPC Planning Staff:
 - i. A publicly accessible natural surface north/south trail along the west side of the Property with a minimum width of eight feet (8 ft.).
 - ii. A publicly accessible natural surface trail that connects to the western adjacent property (Green Acres School).
 - iii. The two trails will connect with each other on site and will ultimately connect to the other master-planned trail segments to the north and to the south of the Site when those properties redevelop.
 - iv. At the terminus of the north/south trail the Applicant must provide signage that identifies these locations as future trail connections until the adjacent properties redevelop.
- c) The Applicant must provide a Public Access Covenant for the benefit of the public over the master-planned natural surface trails in a form and substance approved by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records.

9. Fire and Rescue

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 5, 2023, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Site Plan approval.

Site Plan

10. Site Design

- a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on Sheet A01-A07 of the submitted architectural drawings, as determined by M-NCPPC Staff.
- b) The exterior architectural character, proportion, materials, and articulation of the MPDUs must be substantially similar to the exterior architectural character, proportion, materials, and articulation of the market-rate units.

11. Lighting

- a) Before Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by street lights within the right-of-way.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

12. Site Plan Surety and Maintenance Agreement

Before issuance of any building permit, sediment control permit, or Use and Occupancy Certificate, whichever comes first, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, outdoor recreational facilities, site furniture, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including sidewalks, bikeways, storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

13. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved before the approval of the Certified Site Plan.

14. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, development program, and Site Plan resolution and other applicable resolutions on the approval or cover sheet(s).
- b) Add the following notes:
 - i. “M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading.”
 - ii. “Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
 - iii. “The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Certified Site Plan conformance and compliance, upon approval of the Certified Site Plan (CSP). The pre-con must occur before any site development work commencement and before any work that is covered by the site plan surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS CSP Staff. A copy of the approved Certified Site Plan along with any subsequent amendments is required to be on-site at all times.”
- c) Fire and Rescue Access plan should be included in the Certified Site Plan.
- d) Modify data table to reflect development standards approved by the Planning Board.
- e) Ensure consistency of all details and layout between Site and Landscape plans.
- f) Correct the cross-section widths on the Cover Sheet to reflect the plan widths. This includes:

Private Street C – remove the 11.5-foot-wide tree panel and replace with a 7-foot-wide tree panel and 5-foot-wide sidewalk
- g) Show the bus shelter and bench per MCDOT letter.
- h) Provide a Recreation Supply Point exhibit.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of 2115 East Jefferson Street, Site Plan No.820230080, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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 development satisfies any previous approval that applies to the site.*

The Project satisfies prior approvals, including Sketch Plan No. 320220110.

2. *The development satisfies the binding elements of any development plan or schematic development plan in effect on October 29, 2014.*

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

3. *The development satisfies any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment.*
4. This section is not applicable as the Subject Property's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.
5. *The development satisfies applicable use standards, development standards, and general requirements under the Zoning Ordinance.*

- a. Use Standards

Development Standards

The Subject Property includes approximately 5.7 acres zoned CR-1.5, C-1.5, R-1.0, H-100 . The Application satisfies the applicable development standards as shown in the following data table:

Table 1: 2115 East Jefferson Street Data Table for CR-1.5, C-1.5, R-1.0, H-100 Zone, Optional Method, Section 59.4.5.4

Development Standard	Permitted/ Required	Proposed
Tract Area	N/A	248,765 sq ft
Prior Dedication	N/A	9,547
Proposed Dedication	N/A	0
Site Area	N/A	239,218 sq ft
Mapped Density CR-1.5 C-1.5, R-1.0, H-100		
Commercial (GFA/ FAR)	373,148 sq ft/ 1.5	0
Residential (GFA/ FAR)	248,765 sq ft/ 1.0	245,000 sq ft/0.98
Total Mapped Density (GFA/FAR)	373,148 sq ft/ 1.5	245,000 sq ft/0.98
MPDU requirement	15%	15% (13 units)
Building Height, max average	100 ft.	50 ft.
Open Space (min s.f.)¹	11,961	47,000 s.f.

¹ Per Section 59.4.5.4.B.1.C, Open space for townhouse development is common open space and must meet the requirements of Section 59.6.3.5

i. ***Division 4.7 Optional Method Public Benefits***

In accordance with the Zoning Ordinance, Section 59.4.7.1, the Site Plan proposes 127.66 public benefit points in 4 categories to satisfy the requirements:

Table 2: Public Benefit Calculations- Division 59-4.7

Public Benefit	Maximum Points Allowed	Proposed
Major Public Facilities	70	10
Transit Proximity	70	20
Diversity of Uses and Activities		
Moderately Price Dwelling Units	N/A	95
Protection and Enhancement of the Natural Environment		
Building Lot Terminations (BLT)	30	2.66
Total Points		127.66

Category

Major Public Facility

School and Park Contribution

The Sketch Plan approved a potential for 15 points for making a proportional financial contribution towards a school or a park with the final determination of contributions and points to be determined at Site Plan.

During the review of the Site Plan Application, Planning Staff determined the creation of the natural surface trail within the conservation easement meets the contribution towards a school or a park for the “Major Public Facility”. The pedestrian trail will connect to an existing trail system to the south of the Property with connections to Luxmanor Park and Elementary School. To the west the trail will connect to Green Acres School. Providing this trail connection is essential to providing access through the Property to two school sites and a park. Based on the scope of the project and providing a connection to the schools and a park along with the new sidewalk and streetscape for the private roads, the natural surface trail is sufficient for the Major Public Facility category; rather than making a financial contribution. Planning Staff will continue to assess other projects within the *2018 White Flint 2 Sector Plan* and determine when a proportional financial contribution towards a school or a park is required. The Planning Board approves of the category and a total of **10- points.**

Transit Proximity

The entire Property is located between ½ and 1-mile from the North Bethesda Metrorail (Level 1) Station. The Planning Board approves of the **20-point** request based on the Property’s proximity to a Level 1 transit stop.

Diversity of Uses and Activities

Moderately Priced Dwelling Units

The Applicant is requesting points for providing 15 percent MPDUs, one of the highest priority 2018 *White Flint 2 Sector Plan* goals. The project will provide 15 percent MPDUs. Twelve (12) points are allowed for every percentage point over 12.5 percent MPDUs. The Planning Board approves of the category based on the following calculation:

*Formula: (P-R)*12 + W*2+T*5*

P (percentage MPDUs provided)

R (percentage MPDUs required)

W (percentage 2-bedroom MPDUs provided, not otherwise required)

T (percentage 3-bedroom MPDUs provided)

$(15 \text{ (percentage of MPDUs provided)} - 12.5 \text{ (percentage required)}) * 12 + 0 \text{ (percentage of 2-bedroom MPDUs not required)} * 2 + 13 \text{ (percentage of 3-bedroom MPDUs)} * 5 = \mathbf{95 \text{ points}^2}$

Protection and Enhancement of the Natural Environment

Building Lot Termination (BLT)

The Applicant requests points permitted for the purchase of approximately 0.30 BLT. The Planning Board approves of the category based on the following calculation:

$(7.5\% \text{ of } 124,382.5 \text{ (incentive density gross floor area)})/31,500 * 9 = \mathbf{2.66 \text{ points}}$

b. General Requirements

i. *Site Access*

Vehicular access to the Site will occur via East Jefferson Street via Private Street A. A public access easement will be put on Private Street C to allow the ability for future connections to the north and south of the Subject Property when they redevelop.

Pedestrian access will primarily be made via East Jefferson Street. As described in the Staff Report in the Transportation section, pedestrian access will be improved through the redevelopment of the sidewalk and street buffer on the East Jefferson Street frontage. The existing ADA pedestrian access located on the south side of the site will be maintained. A natural surface trail connection will be made to the adjacent western property. Additionally, a north-south natural surface trail will be constructed and extended to the properties to the north and south when they redevelop.

² This calculation was determined appropriate based on this townhouse development. A different calculation could be interpretation to provide more incentive to multi-family projects to provide 3-bedroom MPDUs.

ii. *Parking, Queuing, and Loading*

Parking is primarily proposed within the front-loaded and rear-loaded townhomes. On-street parking is limited to 19 parallel parking stalls located on portions of Private Street A and Private Street B. A total of 191 parking spaces will be provided. This is higher than the minimum of 80 spaces required and exceeds the maximum of 172 spaces. However, per Section 59.6.2.3.H.2.b., an applicant may provide more parking spaces than allowed by the maximum if all the parking spaces provided in excess of the maximum number allowed are made available to the public and are not reserved. The additional 19 spaces will be assigned as available for public use.

iii. *Open Space and Recreation*

The Project will meet the Open Space and Recreation requirement by providing onsite open space within Parcel A, G and K for a total of 19 percent, exceeding the 5 percent requirement. The Recreation requirements are being met by providing onsite trail connections, picnic seating, natural areas, and open small grass lawn areas.

iv. *General Landscaping and Outdoor Lighting*

There are no particular screening and landscaping requirements per Chapter 59 for this project. The Project provides adequate landscaping and lighting, as well as other site amenities, to ensure that the townhouse development will be safe, adequate, and efficient for residents and visitors.

6. *The development satisfies the applicable requirements of Chapters 19 and 22A of the Montgomery County Code.*

a. Chapter 19, Erosion, Sediment Control, and Stormwater Management

A Stormwater Concept Plan was approved by the Montgomery County Department of Permitting Services on September 5, 2023. The plan will meet the required stormwater management goals via the use of micro-bioretenion planter boxes and an offsite pond retrofit with micro-pools and extended detention to meet remaining ESD requirements.

b. Chapter 22A, Forest Conservation

The Application 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 as further discussed in the findings for Forest Conservation Plan F20230220.

7. *The development provides safe, well-integrated parking, circulation patterns, building massing, and where required, open spaces and site amenities.*

The Project provides satisfactory general vehicular, pedestrian, and bicyclist access, and circulation within the development by providing three new private streets with on-street parking in certain locations. The circulation of the new streets allows the townhouses to front along the streetscape combining with front-loaded and rear-loaded options. The massing of the townhouses is compatible with the adjacent properties. The open spaces exceed the requirement and allow for site amenities to serve the property's residential community and neighboring properties.

8. *The development substantially conforms to the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan.*

The 2115 E. Jefferson Street property is located in the 2018 White Flint 2 Sector Plan (Sector Plan or Plan) area. The Sector Plan and subsequent Sectional Map Amendment rezoned this Property to the CR-1.5, C-1.5, R-1.0, H-100 Zone with a recommendation to: "promote infill development, provide new public benefits that advance the Sector Plan recommendations, and to provide a transition to the existing Luxmanor residential community" (p.35). The redevelopment of the vacant office building to a new townhouse community promotes infill development and provides new public benefits per the Section's Plan Recommendations.

9. *The development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

The proposed development will be served by public water and sewer systems. Fire and Rescue has reviewed the application and has determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations and health care will continue to be sufficient following the construction of the project. Electric, gas and telecommunications services will also be available.

10. *The development is compatible with existing and approved or pending adjacent development.*

The Property is compatible with adjacent commercial properties (zoned CR) to the north and south by providing frontage along East Jefferson Street. It will improve the presence along East Jefferson Street rather than the former office that set back farther from the street. The scale of the townhouse matches the low-rise "townhouse office" development to the east (zoned EOF). The Project establishes the conservation easement buffer and

creates new open space amenities, and this provides new connections to the single-family community to the west (zoned R-200).

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

November 6, 2023

(which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Pedoeem, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor of the motion, at its regular meeting held on Thursday, November 2, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
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