

**OLD ANGLERS COVE  
PRELIMINARY PLAN AMENDMENT NO. 12017029A**

Request to extend the Preliminary Plan’s validity period by an additional 12 months from the initiation date of this Preliminary Plan Amendment.

No. 12017029A  
Completed: 7/8/2024

MCPB  
Item No.  
July 18, 2024

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

## Planning Staff

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### LOCATION/ADDRESS

10640 MacArthur Boulevard, approximately  
2,500 feet west of Brickyard Road

### MASTER PLAN

2002 Potomac Subregion

### ZONE

R-200

### PROPERTY SIZE

1.87 +/- acres

### APPLICANT

Benjamin B. Wisler

### ACCEPTANCE DATE

March 20, 2024

### REVIEW BASIS

Chapter 50



### Summary:

- On February 21, 2019, the Planning Board approved Preliminary Plan 120170290 (Old Angler's Cove) to create three (3) new lots for three (3) single-family detached homes. The Preliminary Plan validity expired on March 21, 2024.
- The Applicant states that significant, unusual, and unanticipated events, beyond their control and not caused by the Applicant, have impaired their ability to validate the plan.
- The Applicant requests to extend the Preliminary Plan's validity period by an additional 12 months from the initiation date of this Preliminary Plan Amendment, per Section 4.2. of Chapter 50.
- The Amendment will not result in any changes to the original Preliminary Plan proposal.
- Staff recommends **approval with conditions** of the Applicant's request to extend the period for which plats must be recorded.
- No community correspondence has been received to date.

## SECTION 1: RECOMMENDATION AND CONDITIONS

### PRELIMINARY PLAN NO. 12017029A

Staff recommends approval of Old Angler’s Cove, Preliminary Plan Amendment No. 12017029A, to extend the Preliminary Plan’s validity period by twelve (12) months from the initiation date of this Preliminary Plan Amendment. The Subject Property is on 1.87 acres of land zoned R-200. All conditions of Preliminary Plan No. 120170290 remain in full force and effect with the addition of Condition 18 below:

#### **New Condition:**

#### **18. Plan Validity Period**

The Preliminary Plan will remain valid for 12 months from the initiation date of this Preliminary Plan Amendment (as defined in Montgomery County Code Section 50.4.2.G), and prior to 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.

## SECTION 2: SITE DESCRIPTION

The Property consists of three unplatted parcels with a combined area of 1.87 acres, identified as P788 on Tax Map FN122, P735 on Tax Map FN122, and P09 on Tax Map FN22, located at 10640 McArthur Boulevard, 2,500 feet west of Brickyard Road (“Subject Property” or “Property”) (Figure 1). The zoning on the Property is R-200 and it is subject to the 2002 *Potomac Subregion Master Plan*. The Subject Property is improved with an existing single-family house and associated outbuildings with an access driveway to McArthur Boulevard.

To the south of the Property is the Chesapeake & Ohio Canal National Historical Park. Adjacent to the southern property line is a federally recognized wetland situated on U.S. National Park Service (NPS) property. A portion of the 25-foot wetland buffer extends onto the Subject Property. The Subject Property is located within the Rock Run watershed, a Use I-P stream.

The surrounding properties are developed with single-family detached residences in the R-200 zone.

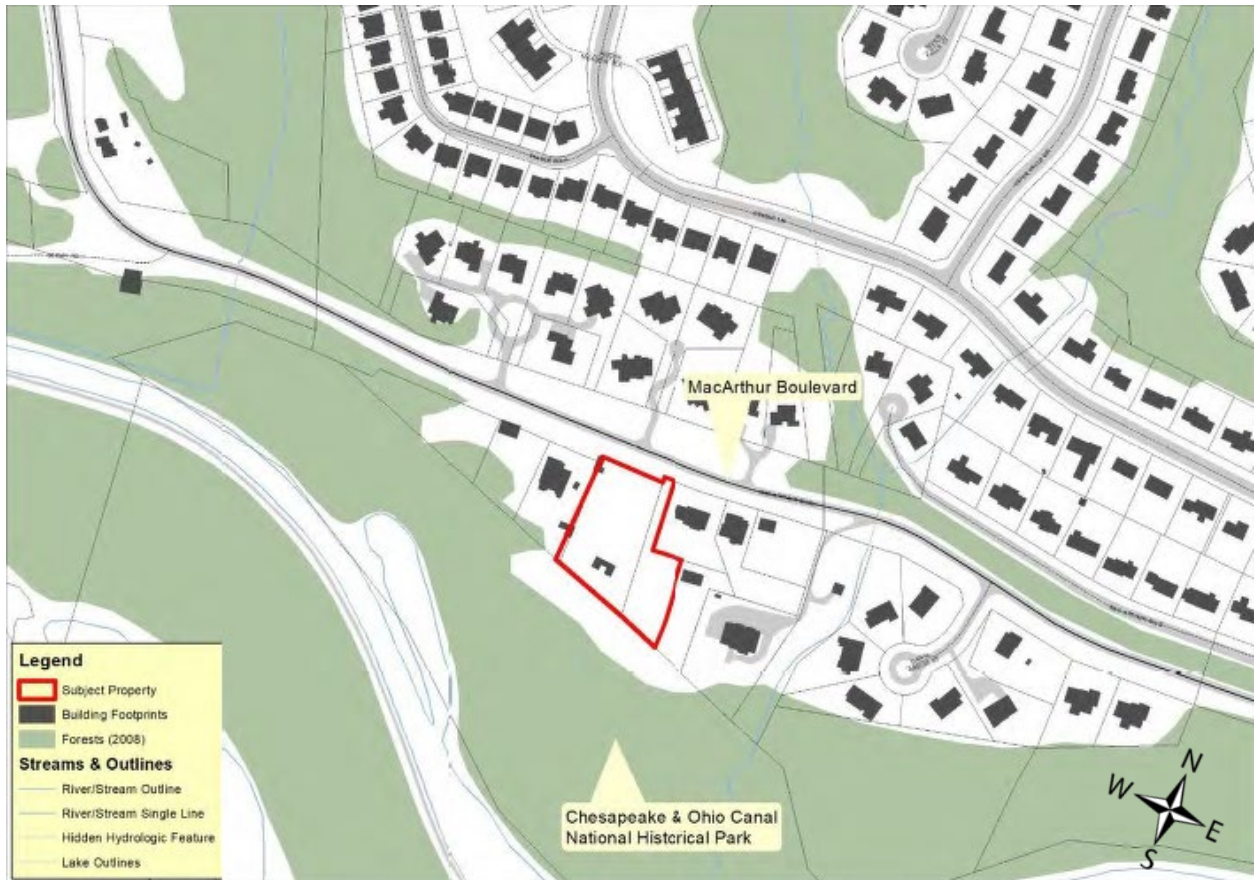


Figure 1 – Vicinity Map and Outline of the Subject Property

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

Preliminary Plan No. 120170290

The Preliminary Plan No. 120170290 was approved by Planning Board Resolution No. 19-013, dated February 21, 2019 (“Preliminary Plan”) [Attachment A] for the creation of three (3) new lots for three (3) single-family detached homes on 1.87 acres. See Figure 2.

### PROPOSAL

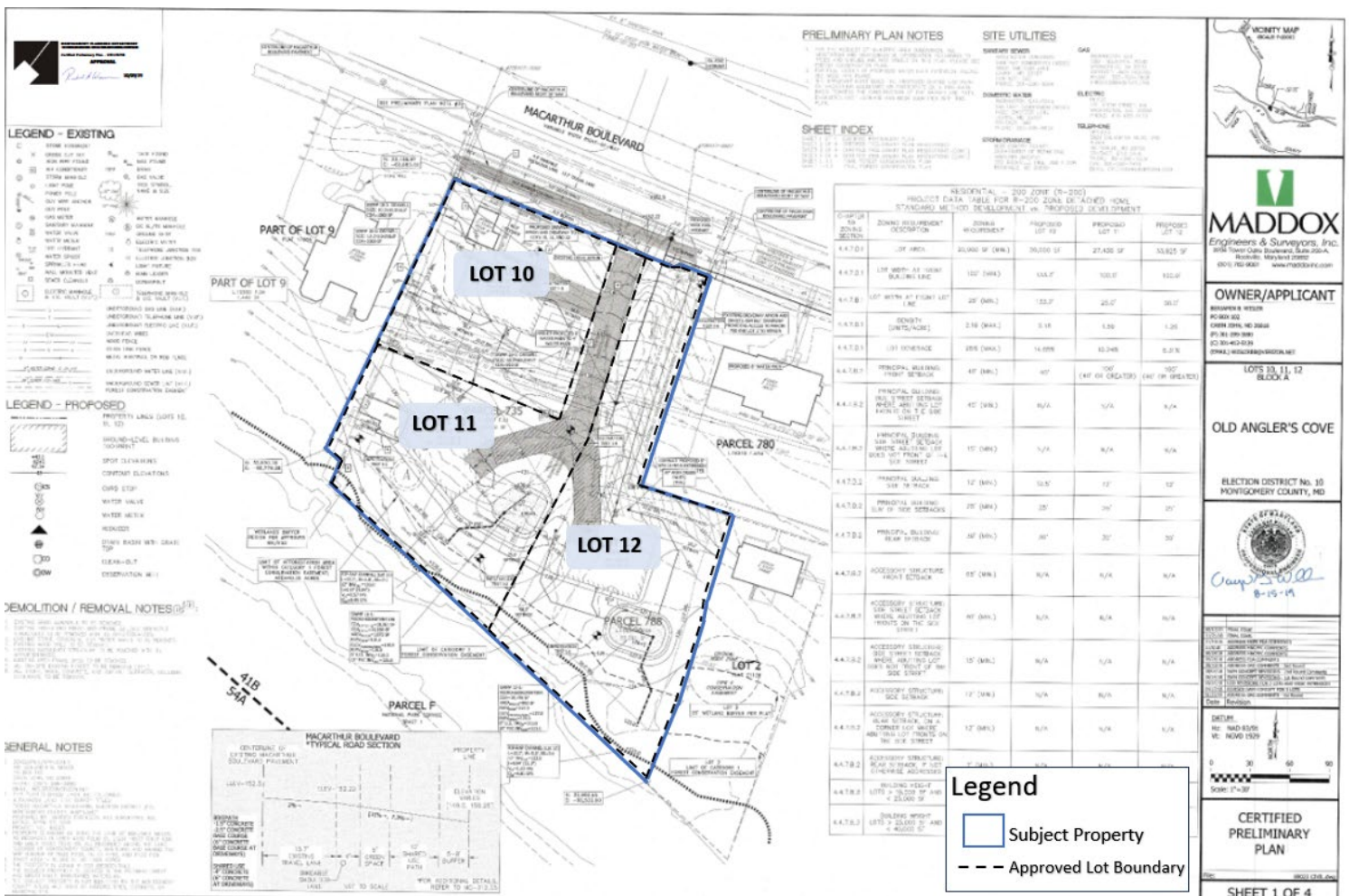
Preliminary Plan Amendment No. 120170290 was submitted on March 14, 2024, before the Preliminary Plan was set to expire on March 21, 2024. The Applicant seeks a one-year extension of the Preliminary Plan validity from the initiation date of this Preliminary Plan Amendment. The request to extend the



Preliminary Plan validity period for one year will allow the Applicant to proceed expeditiously with the recordation of the final plat pursuant to approved Preliminary Plan No. 120170290.

The proposed Preliminary Plan Amendment to extend the plan validity period by 12 months is procedural in nature, with the sole purpose of allowing additional time for the submittal of the required plats, and results in no change to the original approval. In the Applicant's Statement of Justification (Attachment B), it was noted that several factors contributed to post-approval delays and final plat recordation difficulties in finalizing Preliminary Plan No. 120170290. These included the COVID-19 pandemic, which created a public health crisis, and the departure of the prior development team engineer due to personal hardships. These events caused significant adversities for the Applicant and hindered the final plat's recordation. Additionally, the absence of guidance from land use counsel further complicated efforts to navigate regulatory and procedural requirements during the post-approval process.

Figure 2 – Approved Preliminary Plan outlining the Subject Property and the 3 approved lots



## SECTION 4: COMMUNITY OUTREACH

The Applicant has met all noticing and meeting requirements for the submitted Application. As of the date of this Staff Report, the Staff has not received any correspondence from the community regarding this Application.

## SECTION 5: PRELIMINARY PLAN 12017029A ANALYSIS AND FINDINGS

The Applicant requests an extension of the Preliminary Plan’s eligible period, per Section 4.2. of Chapter 50, for plat recordation by twelve months from the initiation date of this Preliminary Plan Amendment. The Preliminary Plan Amendment does not alter the intent and objectives in the originally approved Preliminary Plan, and all findings remain in full force and effect, except as modified below.

Per Section 4.2 of Chapter 50, to approve a Preliminary Plan validity extension, the Board must make the following analysis and findings as part of its approval.

### 1. Extension Requests

***a. Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.***

The Applicant submitted a timely extension request to the Planning Board on March 14, 2024, ahead of the expiration date. Planning Board Resolution No. 19-12 (Attachment A) established a 36-month validity period for the Preliminary Plan, with an original expiration date of March 21, 2022 (based on the initiation date being one month after the mailing date). Through County-wide legislative action, this date was extended by 2 years to March 21, 2024 (Table 1).

*Table 1 - Preliminary Plan Validity Period*

<b>Plan Name / Legislation</b>	<b>Action Type</b>	<b>Initiation / Effective Date</b>	<b>Incremental Validity Period</b>	<b>Expiration of Amended Validity</b>
120170290	Preliminary Plan	3/21/2019	3 years	3/21/2022
SRA No. 19-12	Legislation	3/21/2022	2 years	3/21/2024

***b. The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.***

Not applicable, as the Planning Board will review the Subject Application.

***c. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.***

The Applicant's justification for extending the validity period (Attachment B) cites significant, unexpected events beyond their control that have hindered their ability to finalize the plan. These events have caused undue hardship, making the extension necessary to avoid further complications. Specifically, following the approval of the Preliminary Plan in 2019, the Applicant faced substantial delays in preparing and recording the final plat during the height of the COVID-19 pandemic in 2020. The pandemic created widespread operational disruptions and logistical challenges, severely impacting the Applicant's coordination with their civil engineer and delaying essential steps towards plat recordation.

Additionally, the project engineer, who also managed the development team for Preliminary Plan No. 120170290, experienced a period of personal hardship during the post-approval phase. This circumstance diverted the engineer's focus and resources, resulting in extended delays as the engineer could not provide necessary coordination with the Applicant after leaving the engineering firm.

Furthermore, throughout the Preliminary Plan process, the Applicant navigated regulatory requirements and procedural demands without the guidance of a land use counsel. This absence likely contributed to further complications in managing post-approval tasks and final plat recordation, particularly amidst the unexpected challenges faced during this period.

***2. Effect of failure to submit a timely extension request.***

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

***3. Grounds for extension.***

***a. The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:***

***i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or***

***ii. the occurrence of significant, unusual, and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the***

***plan approval in order to validate the plan) would result to the applicant if the plan were not extended.***

As stated in the Applicant's justification, significant, unusual, and disruptive events beyond their control and not caused by the Applicant have collectively impeded the Applicant's progress towards completing the necessary steps for plat recordation. Extending the validity period will allow adequate time for the Applicant to overcome these challenges and successfully finalize the project.

***b. The applicant bears the burden of establishing the grounds in support of the requested extension. The details outlined in the Applicant's justification are found to qualify as "significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant."***

***4. Planning Board considerations for extension.***

***a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.***

Staff does not recommend the Board require the Applicant to revise the plan to conform to any changes that have occurred in Chapter 50. Under Section 50.4.3.C.1.B.i, the Flag Lot provisions require that in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and: (a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot; and (b) the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts.

If these requirements were to be applied, they would render Lot 11 as unusable, which would likely require elimination of Lot 11 and a reconfiguration into a two lot subdivision. The rear of Lot 11 abuts the Chesapeake & Ohio Canal National Historical Park and adjacent to the rear property line is a federally recognized wetland. A portion of the 25-foot wetland buffer extends onto the Subject Property, which limits the buildable area of Lot 11 while still providing adequate rearyard space.

***b. The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Board or the Director.***

Staff does not recommend that additional information on the feasibility of the project be required. The Amendment will not result in any changes to the original Preliminary Plan proposal. The Applicant maintains that the approved Preliminary Plan is viable.



**5. Planning Board action.**

***a. After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.***

The Preliminary Plan Amendment complies with the notice requirements of Chapter 50 and is scheduled for a public hearing before the Board.

***b. If voting to approve an extension, the Planning Board must only grant the minimum time it deems necessary for the applicant to validate the plan.***

The Applicant has requested a 12-month extension to the Preliminary Plan validity period from the initiation date of this Preliminary Plan Amendment and states this is the minimum necessary to complete the validation. The Applicant's request is a reasonable amount of time given the scale and complexity of the approved development.

***c. The Board may only grant an extension to a preliminary plan within the plan's APFO validity period unless a further extension is allowed by law.***

The Preliminary Plan's Adequate Public Facilities Ordinance (APFO) review has an additional two years of validity before expiration on February 21, 2026.

***d. An applicant may request, and the Board may approve, more than one extension.***

This is the first request for a Preliminary Plan validity extension made for the original approval of Preliminary Plan No. 120170290.

***e. Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of the validity period.***

Not applicable because the approved Project consists of a single phase.

## SECTION 6: CONCLUSION

The Applicant requests an extension of the Preliminary Plan by twelve months from the initiation date of this Preliminary Plan Amendment to allow for plat recordation. The Application meets all requirements and criteria as defined in Montgomery County Code Section 50.4.2.G for the Planning Board to approve the Preliminary Plan validity extension. The Preliminary Plan Amendment does not alter the intent and objectives in the originally approved Preliminary Plan, and all findings remain in full force and effect, except as modified in this Staff Report. Therefore, Staff recommends approval to extend the validity period of this preliminary plan by 12 months with the new condition specified above.

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### ATTACHMENTS

*Attachment A: Preliminary Plan Resolution MCPB No. 19-013*

*Attachment B: Applicant's Statement of Justification*



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## Attachment A

MCPB No. 19-013  
Preliminary Plan No. 120170290  
Old Angler's Cove  
Date of Hearing: February 7, 2019

FEB 21 2019

### RESOLUTION

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

WHEREAS, on September 21, 2017, Benjamin B. Wisler ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three (3) lots on 1.87 acres of land in the R-200 zone, located 2,500 feet west of Brickyard Road ("Subject Property"), in the Potomac Policy Area and 2002 *Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120170290, Old Angler's Cove ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 25, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 7, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120170290 to create three (3) lots on the Subject Property, subject to the following conditions:<sup>1</sup>

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

Approved as to  
Legal Sufficiency:

*Christina Soud* 1/31/18

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

### General Approval

1. This Preliminary Plan is limited to three (3) lots for three (3) one-family detached dwelling units.

### Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the date of mailing of this Planning Board Resolution.

### Outside Agencies

3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated December 24, 2018 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated August 31, 2018 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth 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.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated December 7, 2018 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

### Environment

### Forest Conservation

7. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan (PFCP), No. 120170290, approved as part of this Preliminary Plan.
  - a. Prior to Certified Preliminary Plan, the Applicant must submit for review and approval a Final Forest Conservation Plan (FFCP) consistent with the approved Preliminary Forest Conservation Plan (PFCP) and Section 22A.00.01.09.B of the Forest Conservation Regulations.
  - b. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a Category I Conservation Easement over the 0.29 acres as specified on the approved FFCP. The Category I Forest Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Book/Page for the easement must be referenced on the record plat.
  - c. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.29 acres of new afforestation planting.
  - d. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the FFCP, including the afforestation/reforestation of environmental buffers.
  - e. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
  - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved FFCP.
  - g. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
  - h. The Applicant must plant 0.29 acres of forest on the Subject Property outside of any right-of-way, or utility easements, including stormwater management easements within one year of construction completion as shown on the approved Forest Conservation Plan.

## Transportation

### Existing Frontage Improvements

8. The Applicant must provide the following dedication and show them on the record plat(s) for the following existing road:
  - a) No less than forty-two feet from the existing pavement centerline along the Subject Property frontage for MacArthur Boulevard.
9. Prior to filing a record plat, the Applicant must pay into MacArthur Bikeway Improvement Project – Segment 1, Capital Improvement Project No. 509337 based on an engineer's cost estimate for a required 10-foot shared use path along the Property's frontage as referred to in MCDOT's letter dated December 24, 2018.

#### Record Plats

10. There shall be no clearing or grading of the site prior to recordation of plat(s).

#### Easements

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

#### Certified Preliminary Plan

13. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
14. The Certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

15. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following change:
  - a. Modify the data table to accurately reflect the correct building heights based on lot size required by the Zoning Ordinance and the correct maximum heights allowed for each lot.



BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

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

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision, taking into account the design recommendations included in the Master Plan, and for the building type (single family homes) contemplated for the Property.

The lots comply with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone.

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

The Application is in substantial conformance with the objectives and recommendations of the 2002 *Potomac Subregion Master Plan*.

The Property is located in the "Potomac" community area of the Master Plan. The Master Plan does not specifically address the Subject Property. However, the Master Plan recognizes this part of the Subregion as more developed than the other three community areas identified in the Master Plan (Page 41). Because residential development is dispersed throughout the area, the Master Plan "recommends infill development of remaining vacant properties with residential development essentially similar to what is now there, unless specifically stated otherwise in this Plan." (Page 41)

This Application is in conformance with the Master Plan recommendations for residential infill in this part of the Subregion.

#### Transportation

The 2018 Bicycle Master Plan recommends a 10-foot wide shared use path along the frontage of the Subject Property. The Application pays into the MacArthur Bikeway Improvement Project – Segment 1, Capital Improvement Project (CIP) No. 509337 based on an engineer's cost estimate for the construction of a 10-foot

wide asphalt shared use path along the frontage of the Subject Property. This existing CIP project is a larger scope than just the Subject Property. For efficiency and engineering purposes, it makes more sense for the Applicant to pay for their share of the frontage improvement rather than construct the improvement at this time. The payment in lieu of construction will satisfy the 2018 Bicycle Master Plan.

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

#### Roads and Transportation Facilities

The transportation Adequate Public Facilities (APF) test is satisfied under the 2016-2020 Subdivision Staging Policy. The Property is located in the Rural West Policy Area.

McArthur Boulevard is an arterial street requiring 80 feet of right-of-way in accordance with the *2002 Potomac Subregion Master Plan*. The Application provides a variable width right-of-way dedication ranging between approximately 42.4 feet and 45.4 feet, as measured from the centerline of MacArthur Boulevard. This amount of right-of-way dedication satisfies and exceeds the minimum Master Plan requirements in order to accommodate the Master Plan recommended shared use path. The Application would be required to install a 10-foot wide shared use path, based on the 2018 Bicycle Master Plan, along the shoulder of MacArthur Boulevard. As discussed above, the Applicant will instead contribute to the MacArthur Boulevard Bikeway Improvement Project – Segment 1 (Capital Improvement Project (CIP) No. 509337).

#### Local Area Transportation Review (LATR)

A traffic study is not required to satisfy the Local Area Transportation Review because a net of two new single-family detached units generate fewer than 50 peak hour person trips.

#### Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lots. The Subject Property has W-1 and S-1 water and sewer service categories, respectively, and will utilize public water and sewer.

The Application was reviewed by the MCDPS, Fire Department Access and Water Supply Section, and a Fire Access Plan was approved on December 7, 2018. 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 Subdivision Staging Policy in effect at the time the Application was submitted.

A request for comments was sent to the National Park Service due to the Chesapeake & Ohio Canal National Historic Park boundary abutting the Subject Property. However, the National Park Service provided no response.

The United States Army Corp of Engineers was contacted due to the proximity of the Subject Property to the Washington Aqueduct. The Army Corp of Engineer's responded with no concerns regarding the Application but did provide the following comments:

- MacArthur Boulevard has a 6-ton gross vehicle weight (GVW) limit. Therefore, any vehicle exceeding this GVW, must call the Washington Aqueduct at 202-764-2776 or 202-587-9135 for approval and permission to travel on MacArthur Blvd. Permission will only be granted to overweight vehicles with a GVW of up to 15 tons.
- The concrete ramp leading to these properties off MacArthur Blvd. will be constructed directly over our "New Conduit", which is a 9' diameter unreinforced concrete structure. The clearance to the top of the conduit is only 24". Therefore, the contractor must hand dig when working in this area.
- The stairs that are shown to be removed are also directly over our "New Conduit" with a 24" clearance. Hence, the contractor will have to hand dig when working in this area.
- Please have the developer provide the Washington Aqueduct with one weeks' notice prior to starting work on this subdivision.

#### Applicable School Test

With a net of two new dwelling units, Preliminary Plan #120170290 for Old Angler's Cove falls within the *de minimis* (three units or less) exemption. Therefore, the Application is exempt from any applicable residential development moratoria and it is unnecessary to test the project's estimated impact on school enrollment. Nevertheless, below is additional information about the schools and school cluster that serve the Subject Property.

#### **Cluster Information**

The Application is located in the Walt Whitman High School Cluster.

The Moratorium Enrollment Threshold is the enrollment at which the 120% utilization threshold is exceeded, resulting in a cluster-wide residential development moratorium. Based on the FY19 Annual School Test results, current projections for the cluster fall well within the threshold at each level, therefore the cluster service area remains open to new residential development.

### **Individual School Information**

The applicable elementary school for this Application is Carderock Springs ES and the applicable middle school is Thomas W. Pyle MS.

The Moratorium Enrollment Thresholds are the enrollments at which the 120% utilization threshold and the seat deficit threshold are exceeded. Current projections for both Carderock Springs ES and Pyle MS fall well within the thresholds, therefore both service areas remain open to new residential development.

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

#### **A. Forest Conservation**

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Applicant submitted a Preliminary Forest Conservation Plan (PFCP) as part of this Application as was required under the previous approved version of Chapter 22A, Section 22A-11.b.2.A at the time of initial application. Chapter 22A was updated on October 17, 2018 with no grandfathering clause for the sequencing of submittal of the PFCP and then the Final Forest Conservation Plan (FFCP). This section currently states in part:

*"...If only one approval subject to this subsection is required, an applicant must submit a preliminary forest conservation plan and a final forest conservation plan at the time of development application."*

In order to satisfy the currently approved Chapter 22A, Section 22A-11.b.2.A, the Applicant has agreed to submit the FFCP for review and approval prior to the certification of the Preliminary Plan. This FFCP will be in compliance with the approved PFCP and Section 22A.00.01.09.B of the Forest Conservation Regulations.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The total net tract area for forest conservation purposes is 1.95 acres which includes the Subject Property of 1.87 acres and off-site work of 0.08 acres. The Property is zoned R-200 and is classified as High Density Residential as specified in the Trees Technical Manual.

The Subject Property contains no forest cover. However, based on the forest conservation calculations on the Forest Conservation Plan Worksheet, the Applicant has an afforestation requirement of 0.29 acres. The Applicant meets this requirement by afforesting a 0.29-acre area along the southern property line and placing this area in Category I Conservation Easement. This afforestation area and Category I Conservation Easement ranges from 24-feet wide up to approximately 70-feet wide and is roughly 12,632 square feet in size. Although, this Category I Conservation Easement is, in some areas, less than the minimum required 50-feet in width, it is deemed acceptable because its placement against the southern property line expands and enhances the existing off-site protected forest on the NPS property.

#### B. Forest Conservation Variance

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

This Application will require the removal or CRZ impact to six Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

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

Granting the variance will not confer a special privilege on the Applicant as the removal of the three trees and impacting three others is due to the location of the trees and necessary site design requirements imposed by governmental agencies. Therefore, the Planning Board findings that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon the existing site conditions, requirements of governmental agencies and necessary design requirements of this Preliminary Plan. Of the three specimen trees to be removed (Trees #1, #2, and #7), two are located within the active construction area of the development for the installation of the 8" water main and one is outside the LOD but being severely impacted by construction. The remaining three trees (Trees #5, #6, and #8) are located off-site, but the LOD will encroach into each tree's CRZ.

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

The variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

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

The variance does not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper inches in size, resulting in a mitigation requirement of 25.25 caliper inches of planted, native canopy trees. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on August 31, 2018. The Application will meet stormwater management goals via ESD for all three lots with the use of drywells and micro-bioretenion facilities.



BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration 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 must be filed; and

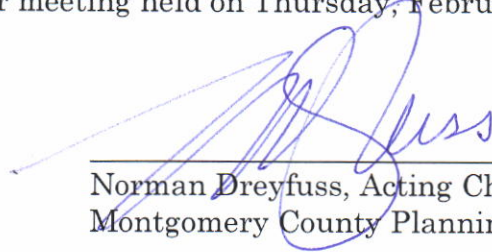
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 21 2019 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Fani-González, seconded by Acting Vice Chair Dreyfuss, with Commissioner Fani-González and Acting Chair Dreyfuss voting in favor, Commissioner Patterson opposed, Chair Anderson recused, and Commissioner Cichy absent at its regular meeting held on Thursday, February 7, 2019, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Norman Dreyfuss, Acting Chair  
Montgomery County Planning Board

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## Attachment B

**Patricia A. Harris**

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*Attorney*

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March 14, 2024

**Via Electronic Mail**

Ms. Sandra Pereira, RLA  
Area 3 Regulatory Supervisor  
Maryland-National Capital Park & Planning Commission  
2425 Reddie Drive  
Wheaton, Maryland 20902

Mr. Neil Braunstein  
Intake and Plat Supervisor  
Maryland-National Capital Park & Planning Commission  
2425 Reddie Drive  
Wheaton, Maryland 20902

Re: Request for Extension of Plan Validity Period – Old Angler’s Cove, Preliminary Plan No. 120170290

Dear Ms. Pereira and Mr. Braunstein:

On behalf of Benjamin B. Wisler (the “Applicant”) the owner of ±1.87 acres of land located at 10640 Macarthur Boulevard, approximately 2,500 feet west of Brickyard Road (the “Property”) and in accordance with Subdivision Ordinance Section 50.4.2.H, we hereby request a one year extension of the Preliminary Plan validity period for the Property.

On February 7, 2019, the Planning Board approved Preliminary Plan No. 120170290 for the development of up to three lots on 1.87 acres of land located in the R-200 Zone (the “Project”). The Preliminary Plan approval is reflected in Resolution MCPB No. 19-013 dated February 21, 2019. Pursuant to Subdivision Ordinance Section 50.4.2.G, the Preliminary Plan remains valid for three years from the initiation date (i.e. March 21, 2022), by which date, absent an extension, a final plat must be recorded in the Montgomery County Land Records reflecting all property delineated on the approved Preliminary Plan. Additionally, pursuant to Condition No. 2 of the

Preliminary Plan Resolution, the Preliminary Plan adequate public facilities (“APF”) period remains valid for 60-months (i.e. until February 21, 2024).

Both of these validity periods were later automatically extended for an additional two years pursuant to Montgomery County Council Ordinance 19-12, making the expiration dates March 21, 2024 and February 21, 2026, respectively. Notably, the Applicant is not seeking an extension of the Preliminary Plan adequate public facilities (“APF”) period. As explained below, the Applicant seeks a one year extension of the Preliminary Plan validity period to March 21, 2025. This request to extend the Preliminary Plan validity period for one year will allow the Applicant to proceed expeditiously with the recordation of the final plat pursuant to approved Preliminary Plan No. 120170290.

Subdivision Section 50.4.2.H.3.a. allows the Planning Board to extend the validity period of a preliminary plan if the Board finds that:

- i. Delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or*
- ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant’s control and not caused by the applicant, have substantially impaired the applicant’s ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.*

Three primary factors contributed to the delay in the recordation of the final plat. First, the Preliminary Plan was approved in 2019 and significant delays associated with final preparation of the plat and its recordation occurred during the post-approval period at the height of the COVID-19 Pandemic in 2020. The Pandemic represented a significant and unanticipated disruptive event, which impaired the Applicant’s ability to coordinate effectively with his civil engineer to prepare a final plat for recordation. To this end, the period following Preliminary Plan approval was marked by delays and operational disruptions stemming from external parties caused by the COVID-19 Pandemic.

Second, the project engineer, who also served as the Applicant’s development team manager for Preliminary Plan No. 120170290, faced severe personal hardship during the period following Preliminary Plan approval. This personal hardship included the loss of his spouse, a tragic event that understandably diverted the project engineer's attention and resources. Due to this hardship, the engineer, who then left the engineering firm, was not available to coordinate with the Applicant, which in turn resulted in significant delays in the work necessary for the recordation of the final plat.

Finally, the Applicant navigated the Preliminary Plan process—from preparation of necessary plans, through development review and post-approval certification—without the guidance of land use counsel. The absence of land use counsel likely complicated efforts to manage and respond to the regulatory and procedural demands of the post-approval process and final plat recordation, particularly in the context of the significant unanticipated events occurring during this time.

Despite these adversities, the Applicant is in the process of advancing the Project, and the civil engineer is currently working on the required easement in order to finalize the Plat. In light of these circumstances, extending the Plan Validity period for one year to allow for the completion of the easement and Plat, the processing and review of the Plat, and its recordation recognizes the hardship presented by significant unusual and unanticipated events, beyond the Applicant's control—as well as the Applicant's determination to complete the Project expeditiously.

For these reasons, the Applicant respectfully requests that the Plan Validity period be extended for one year to March 21, 2025 in order to provide sufficient time for recordation of the final plat pursuant to approved Preliminary Plan No. 120170290.

In furtherance of this request, attached please find a Plan Validity application form and the \$2,915 application fee. We appreciate your consideration.

Sincerely,



Patricia A. Harris



Vincent G. Biase

encls.

cc: Mr. Benjamin B. Wisler