

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-074

Preliminary Plan No. 120220090

MHP Nebel Street

Date of Hearing: July 21, 2022

AUG 10 2022

RESOLUTION

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

WHEREAS, on January 26, 2022, Montgomery Housing Partnership ("Applicant") filed an application for approval of a preliminary plan of subdivision of property to create one (1) buildable lot and one (1) open space parcel on 2.66 acres of tract area that is made up of two parcels known as P362 (North Parcel) in the CR-3.0 C-1.5 R-2.5 H-200 zone and P394 (South Parcel) in the CR-4.0 C-2.0 R-3.5 H-250 zone, for the future development of a multi-family apartment building, located on Nebel Street at the intersection of Old Georgetown Road ("Subject Property"), in the White Flint Policy Area and 2010 *White Flint Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220090, MHP Nebel Street ("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 July 11, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 21, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Verma, seconded by Commissioner Patterson, with a vote of 4-0; Chair Anderson, Commissioners Cichy, Patterson and Verma voting in favor with Commissioner Rubin being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220090 to create one (1) buildable lot and one (1) open space parcel on the Subject Property for up to 172,720 square feet of development for residential uses and for publicly-accessible open space, 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.

General Approval

1. This Preliminary Plan is limited to one (1) open space parcel on the South Parcel zoned CR-4.0, C-2.0, R-3.5, H-250' and one (1) buildable lot for up to 172,720 square feet of development for residential uses or up to 163 multi-family dwelling units on the North Parcel zoned CR-3.0, C-1.5, R-2.5, H-200'.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility ("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 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.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 14, 2022 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.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 29, 2022, and in its floodplain study letter dated July 13, 2022, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letters, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
7. 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 June 17, 2022 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.

8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA"), in its letter dated June 1, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

9. Clearing and Grading

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

10. If an approved 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 amendment.

Transportation

Existing Frontage Improvements

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate ninety (90) feet from the opposite right-of-way line along the Subject Property frontage for Old Georgetown Road.
12. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of streetscape improvements along the property frontage on Old Georgetown Road and Nebel Street.

Record Plats

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

Easements

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

16. Prior to issuance of any right of way permit, a drainage covenant is required for the maintenance of the storm drain system within the southern driveway. The covenant must be in a form approved by the MCDPS ROW Section and the Office of the County Attorney and recorded among the Montgomery County Land Records.

Notes and Labels

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

MPDUs

19. The final number of required MPDUs will be determined at the time of site plan approval.

Certified Preliminary Plan

20. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
21. 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.*
22. Prior to 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 and Rescue Access plan in the certified set. Revise the label for the public storm drain that overlaps the southern driveway to correspond with the private maintenance covenant.

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

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

The Preliminary Plan creates (1) buildable lot for residential use and one (1) open space parcel. The Preliminary Plan meets the dimensional requirements for the CR zone as specified in the Zoning Ordinance and as shown in Table 1 below, in relation to maximum density, height, and minimum open space. Additionally, the Application must provide the minimum required amount of parking spaces for residents and visitors. The final number, configuration, and location of parking spaces will be approved with the Site Plan based on the number of multi-family residential dwelling units.

Table 1: Development Standards in the CR Zone, Optional Method

Development Standard	Permitted/ Required	Approved by Sketch Plan	Approved by Preliminary Plan
Tract Area	n/a		115,839 sf. (2.659 ac.)
North Parcel			108,533 sf.
<i>Dedications</i>			0 sf.
South Parcel			7,306 sf.
<i>Dedications</i>			544 sf.
Site Area			115,295 sf. (2.647 ac.)
Total Maximum Density	up to 354,823 sf.		172,720 sf.
North Parcel (building)			
<i>Commercial Density</i>	up to 162,799 sf.	188,500 sq. ft.	0 sf.
<i>Residential Density</i>	up to 271,332 sf.		172,720 sf. ² (153 units)
<i>Total Density</i>	up to 325,599 sf. (3.0 FAR)		172,720 sf. (1.49 FAR)
South Parcel (open space)			
<i>Commercial Density</i>	up to 14,612 sf.		0 sf.
<i>Residential Density</i>	up to 25,571 sf.		0 sf.
<i>Total Density</i>	up to 29,224 sf. (4.0 FAR)		0 sf.
Moderately Priced Dwelling Units	15%		25.7% (42 units)
Principal Building Height (max.)	200 ft. (North Parcel)	80 ft. (North Parcel)	80 ft. (North Parcel)

² Up to 0.5 FAR is permitted under the standard method or a total of 57,920 square feet for the Property. Therefore, the Project includes 114,800 square feet of optional method incentive density, to achieve a total of up to 172,720 square feet of development.

	250 ft. (South Parcel)	n/a (South Parcel)	n/a (South Parcel)
Public Open Space (min)³ (Net Site Area)	10% (11,584 sf.)	10% (11,584 sf.)	10% (11,584 sf.)

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

The 2010 *White Flint Sector Plan* (“Sector Plan”) provides a blueprint for the future that will transform the White Flint area, including within the Nebel Street District, into a vibrant place served by transit and enhanced by activating uses, open spaces, and amenities. The Planning Board finds that the Preliminary Plan substantially conforms to the recommendations within the Sector Plan regarding land use, density and height, urban form, housing, circulation, and open space.

a) Land Use

The Sector Plan recommends adding more residential capacity near existing transit facilities to balance land uses in the MD 355/I-270 Corridor (page 6). By utilizing the optional method for incentive density, the Project will deliver additional residential density to support a thriving community with a mix of uses along the Nebel Street corridor. The Subject Property is located within the CR Zoning District which allows for a variety of densities and heights, encourages different housing types, transportation infrastructure, and major public amenities, all of which the Project provides.

Density & Height

The Subject Property was previously rezoned from the I-4 zone to the CR zone to effectuate the vision of additional residential uses within the Nebel Street District. The Project satisfies the increased density via the optional method of development with 1.49 FAR. The required public benefit points will be determined at the time of Site Plan.

Additionally, the Plan calls for the highest density and tallest buildings at the Metro station. Therefore, based on its location, the Subject Property does not need to achieve the maximum permitted height. The Sector Plan also addresses building height by stating that within each district, signature buildings near the maximum height are allowed and desirable to create gateways or focal points (pg. 19). The Plan notes building height specifically for the Subject Property, as noted: “Signature buildings, between 150 and 200 feet tall, may be located at the terminus of Old Georgetown Road and Nebel Street....” (page 40). The maximum

³ Final approved by Site Plan.

building height proposed is 80 feet, which adheres to the height limit of 200 feet per the mapped zone and adequate to support the recommended signature gateway. The height is also compatible with existing multi-family mid-rise and high-rise residential developments at the northwest intersection of Old Georgetown Road and Nebel Street and on the west side of Nebel Street, including the White Flint Station Condominium, Wentworth House Apartments, and Aurora at North Bethesda Center.

Affordable Housing

White Flint was envisioned as the place to accommodate a substantial portion of the region's projected growth, especially housing (page 6). Under the staging plan, the Sector Plan recommends that the Planning Board assess whether the build out of the Sector Plan is achieving the Plan's housing goals (page 69). The Plan places emphasis on residential development to provide more affordable housing and expand opportunities for economic diversity located near transit and services. To accommodate a variety of households, all new residential development should include different unit types and sizes, including options for the number of bedrooms per unit, and provide choices for all budgets (page 7).

The Project is creating a new lot and parcel to accommodate new affordable housing within walking distance of the White Flint Metrorail Station. It includes a mix of bedrooms that can accommodate various household needs within the market, including efficiencies and two- and three-bedroom units. Furthermore, the Project will provide 80% of the units to residents earning 30% to 80% of the Area Median Income, plus a majority of the units will be for rent to those earning less than 60% of the Area Median Income. A minimum of 25.1% of the units will be designated as MPDUs. The accommodation of affordable units that far exceeds the minimum code requirements within a transit-centered urban center supports economic diversity and addresses the Sector Plan's goal of promoting social equity (page 23).

Urban Form

With the extension of Metrorail service, White Flint was envisioned as an urban, mixed-use community located at the center of North Bethesda. The Project focuses on a strong urban form by pulling the building up to the lot line, orienting the various entrances towards the street, improving the pedestrian experience by a continuity streetscape, and creating viable connections to open spaces on the Subject Property and to other nearby destinations and community amenities.

Considering the Site's surrounding area, the subdivision Project for residential uses contributes to a mix of building types that combine to form a single cohesive urban environment. While heights vary between confronting residential and mixed-used buildings, there is height compatibility between the existing and

proposed buildings as each is within the maximum height limit for the zoning district and establishes continuity in the urban realm.

The core of White Flint is located between Marinelli Road and Old Georgetown Road and within a ¼-mile of the Metro station, whereas the Subject Property lies outside of the core. To support the urban form, the White Flint Design Guidelines dictate that new development will decline in height and density from the core and Rockville Pike, providing compatible transitions as it approaches the surrounding neighborhoods (page 15).

Community Facilities & Open Space

The White Flint Sector Plan did not recognize the Subject Property as a location for a master-planned community facility or cultural resource such as a library or recreation center. However, the Subject Property is in close proximity to proposed community resources and cultural resources identified in the Sector Plan. A prominent recommendation in the Sector Plan is a new Civic Green that is located outside of the Nebel Street District and to the west of Rockville Pike. The streetscape improvements, as illustrated within the road-cross section, will deliver safe and adequate infrastructure for pedestrians and bicyclists as they travel west towards the Civic Green. The streetscape improvements would also support convenient access to the Sector Plan's Promenade that is envisioned to traverse Marinelli Road as a connector to unify the western and eastern halves of the plan area.

The Sector Plan proposes a recreation loop that connects all the public use spaces within the plan area and is envisioned as "a continuous signed recreational pathway" that "is intended to link new and existing neighborhoods" (page 18). The Subject Property directly fronts on the recreational loop and the Project will enhance and activate this recreational loop through the proposed public open spaces along Nebel Street and through the building's architecture and design.

The Sector Plan identified the Subject Property as a location for public use space. The multi-family apartment building to be provided by way of this subdivision will have different types of open spaces, internal and external to the building, for private and public uses. The Application exceeds the 10% open space requirement set forth in the Zoning Ordinance by providing 11.2% (13,000 square feet) of the Site Area as public open space which will be disbursed across four areas: 1) an urban pocket park, 2) a nature overlook, 3) a main building entrance plaza, and 4) an enhanced streetscape along all frontages.

The subdivision will accommodate this recommendation via the open space parcel created on the South Parcel at the intersection of Nebel Street and Old Georgetown Road to contribute to a network of existing pockets of urban green space that exist in the area. Overall, the Project's open space elements contribute

to the vibrancy of the area and could possibly serve as a catalyst for additional development in the area, which is consistent with the Plan's vision to transform the existing industrial character of this sub-area of the plan.

b) **Environment**

The 2010 Sector Plan and the accompanying 2010 Design Guidelines affirm that new development must incorporate environmentally sensitive design to conserve and generate energy and make maximum use of resources and minimize disruption of the natural environment. Currently, the Site is constrained by its size and environmental conditions. There are significant grades on-site, an existing stream and associated stream valley buffer, 100-year floodplain, wetlands, and existing forest that significantly constrain the developable area of the Property. There is also a collapsed storm drain which has led to an increased floodplain boundary. However, there are no public capital projects slated to improve the storm drain on this Site. Further, the development includes significant encroachments into the stream valley buffer. The Applicant submitted an environmental enhancement plan that includes the removal of existing refuse and management of non-native invasive plants to improve the health and function of the forest and restoration of the stream and adjacent wetlands to mitigate for the buffer encroachment.

A Final Forest Conservation Plan (FFCP) was submitted concurrently with the Preliminary Plan and Site Plan. The FFCP, to be approved with the Site Plan, shows 1.52 acres of forest clearing in order to construct the development. While there is disturbance shown in the forest for the stream restoration, it will be minimized and replanted. Additional details are provided in the subsequent environmental section.

This Project aims to meet a market-demand for affordable housing while also meeting the intent of the Sector Plan by improving the environmental conditions.

c) **Transportation**

Roads

The segment of Nebel Street along the Property frontage is classified as B-5, a Business District Street with a minimum right-of-way width of 80' (40' from center line), within the Master Plan of Highways and Transitways. The existing right-of-way on Nebel Street is 80-feet. Thus, additional dedication is not required. The Applicant will maintain the existing curb to curb street zone as it presently stands, in anticipation of MCDOT's reconstruction of Nebel Street for the separated bicycle lanes. The capital project will construct the planned configuration identified in the Master Plan of Highways and Transitways. While only a portion of the sidewalk will be within the public right-of-way, additional space for an eight-

foot-wide clear pedestrian zone will be built consistently along the entire Nebel Street frontage.

Likewise, the associated Sector Plan and Master Plans also designate Old Georgetown Road, along the Property's frontage, a Business District Street (B-2) with a minimum right-of-way width of 90' (45' from center line). The Applicant will dedicate five feet along the Old Georgetown Road Property frontage to conform to the Master Plan of Highways and Transitways.

Lastly, the White Flint Sector Plan recommends "a transit-focused, multi-modal mobility system that supports the proposed urban center and local neighborhoods" (page 50). The Project will provide infrastructure that facilities safe and adequate access to existing bus and rail services.

Transit

The immediate area is well served by transit that includes the Red Line White Flint Metrorail Station (located within walking distance of the Site), Metrobus, Ride On, and future MD 355 Bus Rapid Transit (BRT) station. The Project includes enhancements to existing sidewalks, bicycle facilities, and pedestrian lighting along both Old Georgetown Road and Nebel Street that will support increased access to nearby existing and future transit service and will be finalized with the Site Plan.

Non-motorized Facilities

Per the Sector Plan vision, the Plan Area should 1) provide links to existing and proposed public transit facilities as well as to the outlying bicycle and trails network and 2) should be identified as a Bicycle/Pedestrian Priority Area to support funding allocations on state roads (Page 56). The Application conforms to this vision.

Bicycle access and safety will be further enhanced with the implementation of the master-planned separated bicycle lanes by MCDOT along both sides of the Applicant's frontage with Nebel Street. As part of a recent restriping of Nebel Street, the width of travel lanes was reduced as a means to accommodate separated bicycle lanes featuring flexible delineators and on-street parking as interim facilities between the bicycle lanes and travel lanes. However, reconstruction of the roadway as part of a recent utility project necessitated the removal of the temporary bikeway infrastructure. Reinstallation of the separated bicycle lanes, travel lanes, and on-street parking is forthcoming as part of an MCDOT capital project following completion of the neighboring Marinelli Road bikeway capital project (P507596).

Per the Bicycle Master Plan, two-way separated bicycle lanes are planned along the south side of Old Georgetown Road. Therefore, the Applicant will provide a

five-foot right-of-way dedication as well as a fee in-lieu contribution, in an amount determined by MCDOT, for the future two-way separated bike lane along the Property's frontage with Old Georgetown Road.

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

a) Roads and other Transportation Facilities

i. Master-Planned Roadways

As summarized in the preceding section, the Application will adequately address master-planned improvements for Nebel Street and Old Georgetown Road.

ii. Pedestrian and Bicycle Facilities

As summarized in the preceding section, the Application will safely and adequately accommodate pedestrian and bicycle facilities.

b) Local Area Transportation Review (LATR)

Pursuant to County Council Resolution No. 16-1324 adopted on April 27, 2010, the Site is exempt from Local Area Transportation Review (LATR) analysis. As a result of the Applicant participating in the White Flint Special Taxing District by reducing its trip generation and financially contributing for transportation infrastructure improvements, the Project will not be required to submit a Transportation Impact Study with the Site Plan to satisfy the LATR. Therefore, under the 2020-2024 Growth and Infrastructure Policy, a traffic study is not required.

c) Other Public Facilities and Services

The Subject Property is located within the W-1 and S-1 water and sewer categories. Therefore, there are adequate water and sewerage facilities to serve the Project. Additionally, the Project will be serviced by adequate police, fire, and health services.

i. Schools

The Preliminary Plan is subject to the FY2023 Annual School Test that is effective July 1, 2022. The Project is served by Luxmanor Elementary, Tilden Middle School and Walter Johnson High School. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 2: Applicable FY2023 School Adequacy

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Luxmanor ES	764	695	91.0%	+69	No UPP	154	222	337
Tilden MS	1,216	973	80.0%	+243	No UPP	369	487	669
Walter Johnson HS ⁴	2,321	2,121	91.4%	+200	No UPP	380	665	1,013

Under the FY23 Annual School Test, Luxmanor Elementary School, Tilden Middle School and Walter Johnson High School do not require any UPP as identified. To calculate the number of students generated by the development, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. With a net of 163 multi-family high-rise units that are not age-restricted, the Project is estimated to generate the following number of students based on the Subject Property's location within an Infill Impact Area:

Table 3: 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	0	0.195	0.000	0.096	0.000	0.139	0.000
SF Attached	0	0.166	0.000	0.091	0.000	0.116	0.000
MF Low-rise	0	0.059	0.000	0.023	0.000	0.032	0.000
MF High-rise	163	0.034	5.542	0.015	2.445	0.016	2.608
TOTALS	163		5		2		2

⁴ Projected enrollment reflects the estimated impact of CIP P651908, which will reassign students between the Downcounty Consortium, Walter Johnson High School and Woodward High School in 2026.

Per Table 3, on average, this Project is estimated to generate 5 elementary school students, 2 middle school students and 2 high school students. The estimated number of students generated do not exceed the adequacy ceilings identified for each school. Therefore, no Utilization Premium Payment (UPP) is required, and neither are partial payments across multiple UPP tiers.

ii. Utilities

Under the Project, there are a total of six (6) existing utility poles and associated overhead wires along the Site's Nebel Street frontage that will remain. During the time of Sketch Plan, Staff recommended that the Applicant include the undergrounding of existing utilities adjacent to the building to the Project, due to specific recommendations of the 2010 *White Flint Sector Plan*, the 2019 *Fire Department Access Performance Based Design Guide*, and the 2021 *Advancing the Pike District Streetscape Guidelines*. Together, these documents supplement the high-level, broad-brush national fire code requirements to respond more effectively and efficiently to local conditions and densifying urban environments.

The 2010 *White Flint Sector Plan* recommends the undergrounding of utilities and providing streetscape on all existing public streets, including, but not limited to Old Georgetown Road and Nebel Street.

The 2019 *Fire Department Access Performance Based Design Guide* acknowledges that "in urban areas overhead utility lines can limit and obstruct fire department access, especially to multi-family residential and commercial buildings with windowsills greater than 27 feet from grade. Overhead utility lines are especially vulnerable during high wind events such as severe thunderstorms, resulting in disrupted service and potentially hazardous situations for residents and emergency responders. For new development, utility lines should be undergrounded where aerial operations are anticipated, namely buildings with any windowsill greater than 27 feet from grade" (page 37).

Additionally, the 2021 *Advancing the Pike District Streetscape Guidelines* states that all new optional method development projects are generally expected to relocate underground all existing utilities within and along their property frontages. It further states that the feasibility of undergrounding existing above-ground utilities should be evaluated in coordination with the utility provider and on a case-by-case basis.

Nebel Street is not included in the list of approved projects to be completed from the White Flint Special Taxing District funds, of which a portion of the Project would apply. Additionally, there is no Capital Improvements Program (CIP) project planned to address these utilities. In response, the Applicant has cited financial costs and proportionality as the prohibitable factors. Importantly, the *Pike District Streetscape Guidelines* underscore that the final decision should not be limited to proportionality, cost, and the extent of the improvements funded by the White Flint Special Taxing District or through a Capital Improvements Program (CIP) project. The Guidelines highlight the exploration of context-specific factors.

The Applicant proposes to accommodate a 2-foot minimum maintenance buffer, an 8-foot-wide sidewalk, and a 6-foot-tree panel buffer without having to underground the existing utilities along Nebel Street. However, this requested major public improvement extends far beyond the accommodation of the streetscape and aesthetics of the public realm. The Applicant's submittal only allows two stories of the six-story building to be reached from the ground and prohibits aerial access to several floors. This forces emergency responders to reach the impacted units by traveling indirectly using alternative building entry points or via the roof in order to descend several floors. Because the rear of the building is environmentally constrained and used for stormwater management areas, points of access for rescue are further reduced.

Undergrounding the existing utility poles and associated overhead wires along the Subject Property's frontage on Nebel Street will substantially improve the efficiency of emergency operations for the affordable, multi-family building Project⁵. With the improvements, the Property will have an enhanced designated area on the ground for operational access, while also allowing aerial access to upper stories, and will substantially improve emergency response time.

The undergrounding of utilities in this major residential project is supported by Montgomery County's Fire and Rescue Service. Furthermore, this improvement will address compliance with the *Fire Department Access Performance-Based Design Guide*. These improvements are expected to eliminate what is recognized as a potentially imminent public safety hazard.

Maintaining the status quo with the utilities in their current state does not achieve substantial conformance with the Sector Plan, Fire Access Guide, or the Pike District Streetscape Guide. Therefore, during the public hearing the Planning Board confirmed the Applicant's requirement to underground the

⁵ The Building Code does not require the undergrounding of overhead utilities for fire access; however, the undergrounding of utilities at this Site will make fire rescue less complicated and more efficient.

existing utilities along the frontage of the North Parcel on Nebel Street. Furthermore, the Applicant will provide the minimum 10% requirement for public open space instead of 11% of the net lot area proposed, potentially allowing for additional space for on-site plantings associated with the Forest Conservation Plan. As conditioned under the Site Plan, the Applicant will also coordinate with Planning Staff during the Certified Site Plan to assess ways to redistribute any elements proposed in excess of the Code requirements and evaluate adequate substitutions associated with the stream restoration improvement.

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

Technical Review 50.4.3.K

A. Environmental Guidelines and Forest Conservation

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

Staff approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 420214300 on August 11, 2020. The 2.66-acre site contains 2.38 acres of forest and 1.898 acres of stream valley buffer, which includes 1.06 acres of floodplains and 0.004 acres of wetlands. The development includes significant encroachments into the stream valley buffer. The Applicant has submitted an environmental enhancement plan, to be approved with the Site Plan, that includes the removal of existing refuse and management of non-native invasive plants to improve the health and function of the forest and restoration of the stream and adjacent wetlands to mitigate for the buffer encroachment.

A Final Forest Conservation Plan (FFCP) was submitted with the concurrently submitted Preliminary and Site Plans. The FFCP shows 1.52 acres of forest clearing to construct the development. While there is disturbance shown in the forest for the stream restoration, it will be minimized and replanted. The Applicant will retain 0.86 acres of forest and planting 0.02 acres of forest. A Category I Conservation Easement will be recorded over 0.89 acres of forest and stream valley buffer. The remaining acres of forest conservation requirements may be met through on-site plantings, off-site forest banking, or payment of fee-in-lieu if banks are not available.

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 of 14 and CRZ impact to 4 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. All trees proposed for impact or removal are located within the existing forest and are accounted for in the forest conservation worksheet.

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 this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the development envelope. The site is highly constrained by environmental features. The Property is almost completely forested and covered by stream valley buffer and floodplain. It is not possible to develop the Property without impacting variance trees, therefore, this is not a special privilege.

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

The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The Applicant has located the development and designed the footprint to minimize impacts on the forest and stream valley buffer.

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 requested variance is a result of the location of trees located adjacent to the existing development, not a condition related to either a 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 Applicant is restoring the deeply compromised stream on the Property, which will improve water quality and is protecting natural resources to the maximum extent practicable. The Project is also providing stormwater management for the development, using Environmental Site Design to the maximum extent practicable.

All of the variance trees to be impacted or removed are located within forest on the Property therefore mitigation is not required beyond the planting requirements determined through the forest conservation worksheet.

The Planning Board approves the requested variance.

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

The Subject Property must comply with Chapter 19 of the Montgomery County Code for Erosion, Sediment Control, and Stormwater Management. The Preliminary Plan includes environmental site design ("ESD") techniques that will filter and retain stormwater on-site primarily through several micro-bioretenion areas, a limited green roof on the courtyard above the garage, and extensive stream restoration. Plantings approved by DPS will also be used in ESD's to the greatest extent practicable. The Stormwater Management Concept Plan No. 287914 was reviewed and approved with conditions on June 29, 2022 by the Montgomery County Department of Permitting Services (MCDPS).

6. *Any other finding(s) that were required as a part of the approval.*

The Project proposes a subdivision for the development of residential units to be built adjacent to the CSX railroad tracks. A Noise Analysis was submitted in conjunction with the joint Preliminary Plan and Site Plan filing, as required by the Sketch Plan approval. The analysis shows noise levels of approximately 73 dBA at the rear courtyard of the development, which is the only exterior public space impacted by noise. The noise analysis examined noise mitigation measures to reduce the exterior noise levels to 65 dBA. A noise wall is not practical because the courtyard is elevated, and the wall would have to be built in the floodplain. However, there are a number of noise barriers that can be integrated into the courtyard design, including a seven-foot-tall barrier. Approval of the Noise Analysis is addressed with the Site Plan and all noise mitigation methods must be shown on the Certified Site Plan. Architectural materials will be used to reduce

indoor spaces to the 45 dBA requirement. Certification of design and construction is required during the permitting process.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 3 years 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 AUG 10 2022 (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 Vice Chair Verma, seconded by Commissioner Cichy, with a vote of 4-0-1; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, and Patterson, voting in favor of the motion, Commissioner Rubin abstaining, at its regular meeting held on Thursday, July 28, 2022, in Wheaton, Maryland and via video conference.



Casey Anderson, Chair
Montgomery County Planning Board