

Patricia A. Harris, Esq.
(301) 841-3832
paharris@lercheearly.com

July 18, 2025

Via Electronic Mail

Artie Harris, Chair
Montgomery County Planning Board
2425 Reddie Drive, 14th Floor
Wheaton, MD 20902

Re: MHP Amherst – Preliminary Plan No. 120250010 and Site Plan No. 820250010 --
Applicant's Response to Al Carr's Petition for Reconsideration, dated July 16, 2025

Dear Chair Harris and Members of the Planning Board

The Applicant, Montgomery Housing Partnership ("MHP") is submitting this letter in response to a petition for reconsideration, dated July 16, 2025, filed by Al Carr. In his petition, Mr. Carr asserts that his request is "for good cause because of new information learned from planning staff and MCDOT after the hearing" regarding, in particular, the lighting along Elkin Street. For numerous reasons, the Board should deny the petition, including Mr. Carr's failure to state any relevant legal basis for reconsideration.

On June 5, 2025, the Planning Board held a consolidated hearing on two applications related to the development of a mixed-use project known as MHP Amherst (Preliminary Plan No. 120250010 and Site Plan No. 820250010). The project includes 272 deeply affordable multi-family units, 39 townhouses, a 42,000 square foot cultural arts center and 20,000 square feet of office use. Mr. Carr testimony during the public hearing focused almost exclusively on his belief that the utilities along Elkin Street should be undergrounded.

Section 4.12.1 of the *Rules of Procedure of The Montgomery County Planning Board* provides that a "petition for reconsideration must specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause." Mr. Carr failed to identify any errors of fact or law and to overcome his burden to prove that a reconsideration is warranted.

It is unclear from Mr. Carr's request what new information was learned from Planning Staff and the Department of Transportation ("DOT") since the public hearing. We note that the final plans for the Preliminary Plan and Site Plan that were the subject of the Board's consideration and action were submitted to M-NCPPC on March 18, 2025 and no changes have been made to these plans since this submission. Thus, there was more than adequate time for Mr. Carr to review the plans, including the following plans pertaining to the Elkin Street lighting and overall streetscape improvements that were submitted as part of the Site Plan:

- Sheet L. 100 – Overall Hardscape Plan
- Sheet L. 104 – Hardscape Enlargement
- Sheet L. 105 – Hardscape Enlargement
- Sheet L. 106 – Hardscape Enlargement
- Sheet L. 401 – Hardscape Details
- Sheet L. 501 – Product Information, including details on proposed street lighting
- Sheet L.600 – Overall Landscape Plan
- Sheet L.604 – Landscape Enlargement for segment of Elkin Street
- Sheet L.605 – Landscape Enlargement for segment of Elkin Street
- Sheet L.606 – Landscape Enlargement for segment of Elkin Street
- Sheet L.701 – Plant Details
- Sheet L.702 – Landscape Details
- Sheet L.8.01 – Photometric lighting plan

It is important to note that DOT, not M-NCPPC, is the agency ultimately charged with determining the lighting to be provided along a public right-of-way (such as Elkin Street) and that DOT's review and approval of lighting occurs subsequent to Preliminary Plan approval, in connection with its review and approval of the right-of-way permit, not at the time of the Preliminary Plan review. Accordingly, DOT's March 27, 2025 letter indicating approval of the Preliminary Plan provides in relevant part as follows:

Posting of the ROW permit bond is a prerequisite to MCDPS approval of the record plat. The ROW permit will include, but not necessarily be limited to, the following improvements:

...

- d. The developer shall provide streetlights according to the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

The Applicant is well aware of the Complete Street Design Guideline recommendations and the MCDOT's & Planning's Streetlighting Design Requirement that Mr. Carr references in his reconsideration request and expects that DOT will rely on these documents in determining the appropriate lighting along Elkin Street.

If Mr. Carr wanted to influence the Planning Board's decision regarding the streetlighting, he had ample opportunity to make his case in connection with the public hearing. While Mr. Carr did submit a one-page email to the Planning Board on June 1, 2025, the primary focus of that submission was the undergrounding of the utilities, with just three sentences addressing the lighting issue. Similarly, during his testimony before the Planning Board, Mr. Carr spent the majority of his time addressing his desire for the undergrounding of the utilities and only in his conclusionary remarks did he even mention the street lighting on Elkin Street and even then, he referred only to the existing lighting, not to any new proposed lighting. Mr. Carr could have addressed the lighting issues in his prehearing email submission or during the Planning Board hearing, but chose not to. The fact that he did not address the lighting in any detail does not mean that he should now be given an opportunity to do so during a reconsideration proceeding. In

requesting reconsideration, Mr. Carr is essentially asking for an opportunity to continue the public hearing in order to focus on an issue that he did not address during the public hearing.

As we stated during the hearing and as Mr. Carr notes in his reconsideration request, as part of the overall project, the Applicant will be upgrading the Elkin Street streetscape. These improvements include a new sidewalk, landscaping and new lighting. To the extent Mr. Carr has an opinion about the proposed lighting, MHP would be happy to meet with him to further discuss this and obtain his input.

For the foregoing reasons, the Planning Board should not waste its valuable time and administrative resources to allow Mr. Carr to argue about the Elkin Street lighting at another public hearing. As a matter of precedent, the Planning Board should not agree to a reconsideration simply because a party who has had a full opportunity to present their case, is not happy with the outcome. Based on the lack of any sufficient legal basis to grant the reconsideration, the Applicant respectfully requests that the Board deny the petition.

Sincerely,



Patricia A. Harris

cc: Mr. Al Carr
Mr. Jason Sartori
Mr. Troy Leftwich
Ms. Erin Fowler