

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

December 27, 2023

MCPB No. 23-135

Preliminary Plan No. 12008024A

Garnkirk Farms

Date of Hearing: December 14, 2023

RESOLUTION

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

WHEREAS, the Planning Board, by Resolution dated August 19, 2013, approved Preliminary Plan No. 120080240, to create 208 lots for 18 one-family detached units and 190 townhomes, and 1 lot for 184 multi-family dwelling units on 37.18 acres of land for a total of 392 dwelling units in the PD-11 zone, located on Shawnee Lane approximately 3,000 feet west of Frederick Road (MD 355), (“Subject Property”), in the Clarksburg Policy Area and the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* (“Master Plan”); and

WHEREAS, on June 5, 2023, Ventaq I, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan to reinstate Preliminary Plan No. 120080240 and establish a new validity period; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12008024A, Garnkirk Farms (“Preliminary Plan,” “Amendment,” 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 December 4, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 14, 2023, 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 Pedoeem, seconded by Commissioner Linden with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor with Commissioner Bartley being absent.

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12008024A to reinstate Preliminary Plan No. 120080240 and establish a new validity period by modifying one condition and adding one new condition. However, all conditions are restated and set forth below and these conditions supersede and replace in their entirety all prior conditions:¹

Restated Conditions

- 1) All conditions imposed by the approval of prior Preliminary Plan No. 120080240 are superseded by the conditions contained herein.
- 2) This Preliminary Plan is limited to 208 lots for 18 one-family detached units and 190 townhouses, and 1 lot for 184 multi-family dwelling units, with an overall total of 392 dwelling units including 12.5 percent MPDUs.
- 3) The Applicant must comply with the binding elements and conditions of County Council Resolution No. 15-1680 approving Local Map Amendment G-832.

Final Forest Conservation Plan

- 4) The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan No. 820120100, as follows:
 - a. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved final forest conservation plan.
 - b. A Category I conservation easement must be shown on the record plat over all areas of forest retention and forest planting as shown on the approved Final Forest Conservation Plan.
 - c. Onsite reforestation must begin within the first planting season after issuance of the first grading permit, with appropriate phasing to allow for construction of sediment and erosion control structures.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 - e. The Applicant must submit financial security for planting 0.26 acres prior to the start of clearing and grading.
 - f. The Applicant must obtain M-NCPPC approval of a five-year maintenance and management agreement prior to M-NCPPC accepting any on-site planting.
 - g. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easements.
 - h. Prior to recordation of the plat, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of a M-NCPPC-approved offsite forest mitigation bank to

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.

satisfy the forest mitigation planting requirements. The offsite forest mitigation requirement must be met within the Clarksburg Special Protection Area or within the Seneca Creek watershed.

- i. The Applicant must field locate and install the natural surface trail required on the Approved Development Plan G-832, within the first planting season after issuance of the first grading permit. The exact location of the path through the Category I conservation easement must be approved by M-NCPPC Staff prior to installation.

Road Dedication/ Improvements

- 5) The Applicant must dedicate and show on the record plat, the following rights-of-way:
 - a. 60 feet from the centerline of the approved four lane divided, Shawnee Lane cross section (MR2010815A) along the Subject Property frontage.
 - b. 75 feet along the eastern property line for Observation Drive.
 - c. 83 feet along the eastern property line for Observation Drive at future Transit Station.
 - d. Internal Street "A" – 60 feet (Secondary Street MC-2002.02)
 - e. Internal Street "C" – 50 feet (Tertiary Street MC-201.02 (Modified))
- 6) The Applicant must construct Observation Drive (A-19) from Shawnee Lane to the northernmost point of access as a two-lane arterial roadway including an eight-foot shared use path. Construction of Observation Drive from Shawnee Lane to Street "C" shall be completed and open to traffic prior to issuance of 200th building permit.
- 7) Prior to recordation of the plat(s), the Applicant must satisfy Montgomery County Department of Permitting Services ("MCDPS") requirements to ensure the construction of a 5-foot wide sidewalk along the property frontage on Shawnee Lane unless construction is waived by MCDPS.
- 8) Prior to issuance of the 50th building permit, the Applicant must provide the following intersection improvement at MD 355 and Foreman Boulevard/Clarksburg High School to meet Local Area Transportation Review (LATR) requirements:
 - one exclusive right-turn lane by re-designating one exclusive northbound left-turn lane as a shared left/through lane with the particular design requirements to be approved by Montgomery County Department of Transportation. Applicant is responsible for all changes required to the traffic signal system as a result of the change in lane configuration at this location.
- 9) The property known as Cawood Property, located in the northeast quadrant of the Observation Drive/Shawnee Lane intersection, must be placed in reservation for a period of five years from the date of the original Preliminary Plan approval for future acquisition by the governmental authority should it be required for transit related parking.

Other Agencies

- 10) The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated March 15, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

- 11) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 12) The Planning Board has accepted the recommendations of the Maryland State Highway Administration (“MDSHA”) in its letter dated May 14, 2012, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 13) Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by MDSHA.
- 14) The Planning Board has accepted the recommendations of the MCDPS – Water Resources Section in its Final Water Quality Plan approval letter dated April 16, 2013, and does hereby incorporate them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.

Record Plat(s)

- 15) The record plat(s) must show necessary easements.
- 16) The record plat(s) must reflect common ingress/egress and utility easements over all shared driveways.
- 17) The record plat(s) must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
- 18) The record plat(s) must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 19) The record plat(s) must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 (“Covenant”). Prior to issuance of the 294th building permit, the Applicant must provide verification to Staff that the Applicant’s recorded HOA Documents incorporate the Covenant by reference.

Site Plan

- 20) Prior to recordation of any plat, Site Plan No. 820120100 must be certified by MNCPPC Staff.
- 21) No clearing, grading or recording of plats prior to Certified Site Plan approval.

- 22) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at Site Plan.
- 23) Final number of MPDUs will be determined at the time of Site Plan.
- 24) 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 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. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
- 25) In the event that a subsequent Site Plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the Site Plan.
- 26) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid until July 19, 2024. This is inclusive of all prior extensions granted through County legislation as of the date of the mailing of this Resolution.
- 27) The Preliminary Plan will remain valid until July 19, 2024, and before the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

Preliminary Plan Reinstatement

Section 50.4.2.H.2.a of the Montgomery County Code states that failure to submit an extension request in a timely fashion voids all non-validated portions of a preliminary plan. Section 50.4.2.H.2.b. goes on to state that the Board may reinstate a Preliminary Plan and establish a new validity period, with or without a new APF review, if the Applicant demonstrates practical difficulty or undue hardship.

As part of this Amendment, the Applicant requests reinstatement of the Preliminary Plan, including establishing a new Preliminary Plan validity period to July 19, 2024, matching the current APF validity period. This will allow the Applicant to plat the remaining four-acre lot for the multifamily building and request a building permit.

As detailed in Table 1 below, the Preliminary Plan was originally approved in June 19 of 2013 and provided with a 5-year plan validity period, which expired on July 19, 2018. Through County Council legislative action, the Preliminary Plan was automatically extended by an additional 2 years to July 19, 2020.

Table 1: Approved Staged Development Validity Period

Action	Approved Development	Validity Duration	Updated Validity Expiration
Original Approval	120080240	5 years	07/19/2018
Ord. No. 19-12, § 3	One automatic 2-year extensions for active preliminary plans	2 years	07/19/2020

As detailed in the Statement of Justification for the reinstatement, the Applicant would face practical difficulties and undue hardship if the Preliminary Plan is not reinstated. In the months following the outbreak of the COVID-19 pandemic, the Applicant paused efforts to construct the multifamily building due to the complex economic and logistical challenges at that time. Within that challenging time, the Applicant inadvertently allowed the Preliminary Plan to lapse. The Plan validity expired just 11 days prior to being eligible for an additional County Council bill that would have extended validity further; the county-wide extension legislation is indicative that the chaos of the pandemic warranted additional time for plan implementation. The expiration of this particular Plan was likely an oversight of the legislation which only offered relief to still valid applications as of July 28, 2020, but not retroactively to applications still valid at the start of the pandemic. The Applicant in turn was unaware that the plan had expired until requesting a building permit for construction. The Applicant has invested significant resources into the project to date, building out all necessary infrastructure, utilities, including all internal roads and conditioned improvements (Table 2) and community amenities. The delay through a possible new application process would add additional months to the construction calendar, adding additional significant costs. The delay and cost overruns could jeopardize the viability of the project, specifically the provision of affordable housing. In partnership with the Montgomery County Housing Opportunities Commission, the building will provide 184 housing units, the majority of which will be designated as affordable units exceeding the affordability guidelines for MPDUs, in a range of sizes to accommodate a diverse range of incomes, family sizes, and housing needs.

Table 2: Conditioned Infrastructure Improvements

Condition #	Infrastructure Requirement	Completed Y/N
4	Dedicate all public road rights-of-way	Y
5	Construct extension of Observation Drive from Shawnee Lane to northernmost access point as a two-lane arterial roadway including a shared use path	Y
6	Construct sidewalk along frontage of Shawnee Lane	Y
7	Intersection improvements at Frederick Road (MD 355) and Foreman Boulevard	Y

The request to reinstate the Preliminary Plan through July 19, 2024, does not alter the intent of the original approval and the only change is to update the Plan validity period necessary to complete the record plat process. The Application would continue to comply with the prior APF approval.

As part of the review of this application, nearby intersection capacity based on recent available counts was observed. All previously studied intersections continue to operate within congestion standards and there are no concerns over transportation adequacy (Table 3).

Table 3: Previously Studied Intersections

Intersection	Continues to Meet Congestion Standard?
MD 121 & Gateway Center Dr./Stringtown Rd.	Yes
MD 355/Stringtown Rd.	Yes
MD 355/Shawnee Lane	Yes
Gateway Center Dr./Shawnee Lane	Yes
MD 355/Foreman Blvd.	Yes

Additionally, local school capacity was analyzed for Clarksburg Elementary School, Rocky Hill Middle School, and Clarksburg High School. At present, Clarksburg High School is over capacity. However, the school will complete an expansion project in July 2024 that is anticipated to address all capacity concerns, prior to any residents moving into the project. The remaining schools will continue to operate within capacity. Therefore, there are no concerns over the existing approved APF finding; all public facilities will continue to be adequate.

The Application will remain in compliance with Chapter 22A of the Forest Conservation Law of Montgomery County Code through the previously approved NRI/FSD and Final Forest Conservation Plan (FFCP). A Final Water Quality Plan was approved by MCDPS on September 12, 2022.

The Application meets the requirements for the reinstatement for the Preliminary Plan.

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

December 27, 2023

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

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 4-0-1, Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining, at its regular meeting held on Thursday, December 21, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board