

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-070
Preliminary Plan No. 120220020
Kings Crossing
Date of Hearing: July 6, 2023

JUL 20 2023

RESOLUTION

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

WHEREAS, on January 15, 2022, Jim Zhao and Dianna Lu (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create eleven (11) lots on 5.99 acres of land in the R-200 zone, located in the southeast corner of the intersection of Autumn Gold Road and Crossview Road (“Subject Property”), in the Germantown West Policy Area and 1989 *Germantown Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120220020, Kings Crossing (“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 June 23, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 6, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley and Hedrick voting in favor, with Commissioner Linden absent.

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220020 to create eleven lots on the Subject Property, subject to the following conditions:¹

General Approval

1. This Preliminary Plan is limited to eleven (11) lots for ten (10) new detached dwelling units and one (1) existing detached dwelling unit and two open space parcels.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities (“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 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.

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 9, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations 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 May 19, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which

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.

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 MCDPS, Fire Department Access and Water Supply Section in its letter dated June 22, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Future Site Plan Approval Required

8. Before clearing or grading or recording a plat for the Subject Property, the Applicant must receive Staff certification of a Planning Board-approved site plan. The number and location of site elements, including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, and shared use paths will be determined through site plan review and approval.
9. If an approved site plan or 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 or site plan amendment.

Forest Conservation

10. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120220020 (“PFCP”), approved as part of this Preliminary Plan:
 - a. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPFC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
 - b. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 30.25 caliper inches. Planting locations to be shown on the Final Forest Conservation Plan (“FFCP”).
 - c. Applicant must submit a FFCP for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
 - d. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

Transportation

11. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a 6-foot-wide sidewalk along the property frontage on Crossview Road and Autumn Gold Road.
12. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDOT and M-NCPPC Montgomery County Department of Parks ("Montgomery Parks") to ensure construction of an 11-foot-wide shared use path connecting the Crossview Road cul-de-sac and Country Meadow Road cul-de-sac as shown on the Certified Preliminary Plan.
13. Applicant must construct the 11-foot-wide shared use path as shown on the Certified Preliminary Plan including the portions on parkland subject to the following conditions:
 - a. Any activity on parkland requires an approved Park Construction Permit including, but not limited to, the construction of the portions of the shared use path on parkland.
 - b. All facilities to be constructed by the Applicant on parkland must be acceptable to Montgomery Parks staff and must meet or exceed Montgomery Parks design standards and specifications.

Record Plats

14. There shall be no clearing, grading construction of the site before recordation of plat(s).

Easement

15. The record plat must show necessary easements, including, but not limited to the following:
 - a. An 8-foot-wide Public Improvement Easement (PIE) and an overlapping 18-foot wide Public Utility Easement (PUE) on the frontage of Crossview Road and Autumn Gold Road.
16. The record plat must reflect a common use and access covenant for the benefit of the public over all sidewalks and paths not included in a public right-of-way. The covenant must be in a form approved by the M-NCPPC Office of the General Counsel 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 include the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."

19. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 ("Covenant").

Certified Preliminary Plan

20. 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 issuance 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.*
21. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a. Show resolutions and agency approval letters on the certified set.
 - b. Include the approved Fire and Rescue Access plan in the certified set.
 - c. Add an 11-foot-wide public access easement over the portion of the shared use path located on the Subject Property.
 - d. Prior to Certification, the Applicant must revise the Preliminary Plan and PFCP, to show the revised Category I Forest Conservation Easements, including the relocation of easement area from Parcel D to the area abutting the southern Forest Conservation Easement, as approved by Staff.

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 Subject Property is the last undeveloped land in the center of an existing neighborhood with an established lot and block design. The proposed development is an infill project that will continue the existing block and lot pattern. The lots will

line the north and western perimeter of the Property, abutting Autumn Gold Road and Crossview Road. The units will ultimately front on the respective roads, which will be reviewed by a future site plan application. The lots range in size from 9,000 - 11,000 square feet, which is consistent with the neighboring lots. The only outlier to the established lotting pattern is the approximately 107,000 square foot lot being created for the existing house to remain. The size and shape of this lot is appropriate given its location in the center of the property, tucked behind the new proposed lots, and to accommodate the existing house.

The Subject Property is not a master planned site and recreation requirements are not required for this Application. However, approximately 21.9 percent of the Property is being provided as Common Open Space, consistent with the R-200 Optional Method (cluster) requirements and passive and active recreation facilities are available in the adjacent King's Crossing Local Park.

The lots and residential use were reviewed for compliance with the dimensional requirements for the R-200 zone under the Optional Method - Cluster as specified in the Zoning Ordinance. The lots as proposed will accommodate building areas so that the houses can meet all the dimensional requirements for area, frontage, width, and setbacks in that zone taking into account the proposed improvements. A summary of this review is included in the Staff Report.

After Preliminary Plan approval, Site Plan approval is required because the Application is utilizing the Optional Method of development – Cluster option. As part of the Site Plan, the Applicant will be required to demonstrate, in detail, how the design of the proposed subdivision meets the intent of the zone.

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

The proposed single-family detached residential project is located at the southeast corner of the intersection of Autumn Gold and Crossview Roads within the KI-2 Analysis Area of the 1989 *Germantown Master Plan* Area. The KI-2 Analysis Area, which is approximately 771 acres, contains a mix of single-family detached, single-family attached, and multi-family residences.

The KI-2 Analysis Area in the 1989 *Germantown Master Plan* has been largely built out according to the Plan. Specifically, the 1989 Plan states that “the entire Analysis Area is recommended to retain its R-200 zoning classification and is appropriate for rezoning to the PD-2 Zone with a density limit of approximately 1.74 units per acre, excluding MPDUs. The purpose of the PD-2 Zone is to enable garden apartments to be used to meet the MPDU requirement instead of townhouses.” A majority of the KI-2 area has been rezoned to PD-2 except for the Subject Property, which is still zoned R-200.

The Subject Property will be developed in a manner that is consistent with the surrounding residential context. The existing Tudor residence and garage on the Property will remain as is. However, the driveway to the house will be relocated from the cul-de-sac at the terminus of Crossview Road northward so that it is on axis with Broken Oak Road. This relocation of the driveway will reduce the amount of impervious surface on the existing home property.

A total of ten new single-family detached units, six along Crossview Road and four along Autumn Gold Road, will have their front facades facing the two streets. The proposed lot sizes are similar to the existing surrounding residences. The new units will also have setbacks similar to the other nearby existing homes.

A proposed forest conservation easement will be provided along the northern portions of the existing homesite behind the new properties located along the two adjacent roads and in the southeast corner of the homesite adjacent to King's Crossing Local Park.

The KI-2 Analysis Area recommends stringent environmental mitigation measures for proposed developments as outlined in Appendix D of the Master Plan. One of these measures is to limit impervious surfaces to no more than 20% for development projects within the KI-2 area. The current Application proposes total impervious surfaces of approximately 19.84% as shown on the submitted Impervious Surface Plan.

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

As conditioned, adequate public facilities exist to support and service the Subject Property in accordance with Section 50.4.2.D of the Subdivision Regulations.

a) Roads and other Transportation Facilities

i. Existing Facilities

The Subject Property fronts on Autumn Gold Road and Crossview Road, which are both open section neighborhood streets with 50-foot-wide rights-of-ways. Autumn Gold Road currently has a 5-foot-wide sidewalk along the frontage. Crossview Road currently has no sidewalk.

ii. ***Proposed public transportation infrastructure***

The existing sidewalk along the frontage with Autumn Gold Road will be improved to six feet (6 ft) in width to match current sidewalk standards and provide a 15-foot-wide buffer (open section with street trees and swales). Similarly, a new six-foot-wide sidewalk will be constructed along the frontage of Crossview Road. Additionally, an 11-foot-wide asphalt shared use path will be constructed to connect the Crossview Road cul-de-sac with the nearby Country Meadow Road cul-de-sac through the southernmost boundary of the Subject Property along with a small portion through King's Crossing Local Park. The shared use path will provide important bike and pedestrian connectivity to currently disconnected neighborhoods while providing additional access to the park.

The Application has been reviewed by the MCDOT who determined that sight distance at each driveway is sufficient and the proposed roadway cross-sections for Crossview Road and Autumn Gold Road are sufficient to serve the proposed lots. No additional right-of-way dedication is necessary.

b) Local Area Transportation Review (LATR)

Adequate public facilities exist to support and service the Property in accordance with Section 50.4.3.J of the Subdivision Regulations.

The Property is located in the Germantown West (16) Policy Area, which is categorized as a Green Policy Area under the 2020–2024 *Growth and Infrastructure Policy* ("GIP").

The Applicant has satisfied the requirements of the LATR, and the public transportation facilities are adequate for the Project. The Application proposes 10 net-new single-family detached units which will generate 8 net-new morning peak-hour person trips and 10 net-new evening peak-hour person trips. The Application is exempt from additional LATR review, as the 2020-2024 *Growth and Infrastructure Policy* only requires a transportation impact study for any project that is estimated to generate a net increase of 50 or more person trips in either the morning or evening peak hours.

c) Schools

The FY24 Annual School Test, approved by the Planning Board on June 22, 2023 and effective July 1, 2023 is applicable to this Application. The Application proposes 10 new single-family detached units and one existing single-family unit to remain.

School Adequacy Test

The Subject Property is served by Spark M. Matsunaga ES, Kingsview MS and Northwest HS. Based on the FY24 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following Table 1.

Table 1 - Applicable FY2024 School Adequacy

School	Projected School Totals, 2027				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Spark M. Matsunaga ES	591	510	86.3%	+81	No UPP	166	200	288
Kingsview MS	1,041	985	94.6%	+56	No UPP	182	265	421
Northwest HS ²	2,291	2,189	95.5%	+102	No UPP	282	561	904

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY24 Annual School Test, Spark M. Matsunaga ES, Kingsview MS and Northwest HS do not require any UPP. If the project is estimated to generate more students than the identified ceilings, then UPPs or partial payments at multiple tiers may still be required.

Calculation of Student Enrollment Impacts

To calculate the number of students generated by the proposed amendment, the number of dwelling units is multiplied by the applicable School Impact

² Projected enrollment reflects the estimated impact of CIP P651909, which will reassign students between Gaithersburg HS, Richard Montgomery HS, Northwest HS, Quince Orchard HS, Wootton HS and Crown HS in 2027.

Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit. With a net of 10 units that are not age-restricted, the Application is estimated to generate the following number of students based on the subject property's location within a Turnover Impact Area:

Table 2 - 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	10	0.185	1.850	0.102	1.020	0.154	1.540
SF Attached	0	0.218	0.000	0.119	0.000	0.167	0.000
TOTALS	10		1		1		1

As shown in Table 2 on average, this Application is estimated to generate one elementary school student, one middle school student and one high school student. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 1, therefore no additional UPPs are required and neither are partial payments across multiple UPP tiers.

d) Other Public Facilities and Services

Public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy currently in effect. Other public facilities and services are available and are adequate to serve the proposed residential development.

The Washington Suburban Sanitary Commission has reviewed the Application and identified existing eight-inch gravity sewer mains and eight-inch water mains in the adjacent road right-of-way that are available to serve the subdivision. The use of water and sewer is consistent with the Subject Property's W-1 and S-1 service category.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Project Area has adequate access for fire and rescue vehicles by transmittal dated June 22, 2023.

Electric and telecommunications services as available and adequate to serve the proposed lots. Public utility easements and public improvement easements will be recorded to provide pedestrian improvements and utility connections to the surrounding subdivision.

Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 *Growth and Infrastructure Policy*.

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

A. Forest Conservation

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Application was accepted on January 10, 2022, which precedes the effective date of the newest version of Chapter 22A, the Forest Conservation Law. As such, this Application was reviewed under the version of Chapter 22A dated February 5, 2021. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of subject trees. The Preliminary Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

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

The Applicant has submitted a Preliminary Forest Conservation Plan ("PFCP") with the current development plan application for Preliminary Plan No. 120220020. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned R-200 and is assigned a Land Use Category of High Density Residential ("HDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

As discussed in the Staff Report, the tract area for forest conservation purposes includes the 5.99-acre Subject Property plus 0.41 acres of offsite disturbance associated with this Application, for a total net tract area of 6.40 acres. There is a total of 2.83 acres of existing forest on the Subject Property. The Application proposes to remove 1.60 acres and retain 1.23 acres of forest. The proposed forest clearing generates a reforestation requirement of 0.48 acres. The Applicant proposes to meet the planting requirement on-site by planting 0.50 acres of new forest adjacent to portions of the existing forest. All of the retained and planted forest will be protected in a Category I Conservation Easement.

After posting the Staff Report, the Applicant proposed certain changes to the location and configuration of the proposed Category I Conservation Easements. During the Planning Board hearing, Staff presented additional evidence on the record, identifying how the Applicant plans to modify the Forest Conservation Plan, including relocation of a portion of the reforestation, from the existing garden area, south of Parcel D (Common Open Space) and removing 0.5 acres of existing forest to the east of the existing sheds. The revised plans, which were reviewed and approved by the Planning Board as reflected in Condition 21(d), includes an additional 0.5 of existing forest clearing, will be replaced at a 2:1 ratio. The additional reforestation and relocated reforestation area will be provided on-site by explanting the Category I Easement between the existing driveway and shared-use path. As approved, the total amount of forest removed is 1.65 acres, forest retained is 1.18 acres and 0.59 acres of reforestation will be required, subject to minor modifications to be reviewed and approved as part of the Final Forest Conservation Plan.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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 (6) 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.

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the necessary layout of the proposed development on the Subject Property, which is dictated by the existing site conditions including existing house to remain, development standards of the zone, Montgomery County agency requirements, and requirements associated with Master Plan objectives. There are two trees requested to be impacted and four trees requested to be removed which are located within or adjacent to the developable area of the Property.

Two Protected Trees, Tree 2 and 10, are being impacted by the limits-of-disturbance ("LOD") for the project. Tree 2 is located adjacent to a proposed shared use path between Crossview and Country Meadow Road that runs through King's Crossing Local Park. Tree 10 is being impacted by the required removal of a portion of the existing driveway on Lot 30 in order for the development to meet the 20% impervious limit set by the KI-2 area in the *Germantown Master Plan*.

Four Protected Trees, Trees 1, 7, 8 and 12, are proposed to be removed. Tree 12 is located within the footprint of a proposed unit; Trees 1 and 8, are located within the LOD and in close proximity to proposed units; and Tree 7 is located on the LOD of the development. Trees 1, 7 and 8 will have most of their CRZs removed during construction and given their current condition may become hazard trees in the future threatening the residential structures. As a result, it is recommended that these trees be removed now. The inability to impact or remove these trees would potentially render portions of the site undevelopable for this project or pose threats to the health, safety and welfare of future homeowners. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the development of single-family detached units, which is a reasonable and significant use of the Property. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

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 specified trees is due to the development of the Property, location of the trees within the LOD of the Property and necessary site design requirements. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting this variance is not a special privilege that granted only this Applicant and 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application.

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 existing conditions and the proposed site design and layout of the Subject Property, 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 will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer, wetland or Special Protection Area. At time of the Final Forest Conservation Plan ("FFCP"), mitigation will be proposed for the removal of these four trees by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision

There are 4 Protected Trees proposed for removal in this variance request, resulting in a total of 153 inches of DBH being removed as shown on the PFCP. For mitigation purposes, only Trees 1, 7 and 12 are counted for a

total of 121 inches of DBH since Tree 8 is located within forest being removed and its removal is mitigated for within the FCP worksheet.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 30.25 inches with the installation of 10 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. Placement of these 10 mitigation trees will be determined at FFCP. Although these trees will not be as large as the trees lost, they will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. There is some disturbance within the CRZ of 2 trees, Trees 2 and 10; however, they will receive adequate tree protection measures, their roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is required for Protected Trees impacted but retained. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

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

The Preliminary Plan received an approved stormwater concept plan from the Montgomery County Department of Permitting Services, Water Resources Section on May 19, 2023. The Application will meet stormwater management goals using environmental site design, including drywells, rooftop disconnection and landscape infiltration facilities.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.*

There is no evidence, actual notice, or constructive notice of a burial site on the Subject Property. The Subject Property is not included in the Montgomery County Inventory.

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 before 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 JUL 20 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 Bartley, and Hedrick voting in favor, Commissioner Linden abstaining, at its regular meeting held on Thursday, July 13, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board