

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-115
Preliminary Plan No. 120220100
4901 Battery Lane
Date of Hearing: December 15, 2022

JAN 05 2023

RESOLUTION

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

WHEREAS, on April 21, 2022, WC Smith Development ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 2.12 acres of land in the CR-1.5 C-0.5 R-1.5 H-120' and Bethesda Overlay Zone, located on the north side of Battery Lane, approximately 450 feet west of Woodmont Avenue ("Subject Property"), in the Bethesda CBD Policy Area and 2017 *Bethesda Downtown Sector Plan* area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220100, 4901 Battery Lane ("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 December 5, 2022, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 15, 2022, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hill, seconded by Vice Chair Presley, with a vote of **5-0**; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill, and Piñero voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220100 to create one lot on the Subject Property, 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.

1. This Preliminary Plan is limited to one lot for up to 372 multi-family dwelling units.
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).
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.
4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letters dated July 29, 2022 and December 2, 2022 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations provided in the letters, 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 July 26, 2022 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as provided in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
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 September 29, 2022 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as provided in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
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 bike 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.
10. The Applicant must provide the right-of-way dedications and show on the record plat(s) all land necessary to accommodate 10 additional feet (for 35 feet total from the existing pavement centerline) along the Subject Property frontage for Battery Lane.
11. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDOT to ensure construction of a seven-foot (7 ft) sidewalk (minimum) with a six-foot (6 ft) planted buffer (minimum) with a double row of trees along the Property frontage on Battery Lane.
12. Before release of any above-ground building permit, the Applicant must permit and bond the following off-site improvements pursuant to MCDOT requirements, as illustrated on the Certified Preliminary Plan. The Applicant must construct these improvements before a final use and occupancy certificate is issued.
 - a. Pedestrian System Adequacy Mitigation
 - i. Replace the existing sidewalk along the frontage of 4925 Battery Lane with a seven-foot (7 ft) sidewalk (minimum) with a six-foot (6 ft) (minimum) "street buffer" per the 2022 Complete Streets Design Guide.
 - ii. Replace the existing sidewalk along the south side of Battery Lane, between Woodmont Avenue and the western property line of 8240 Wisconsin Avenue with a seven-foot (7 ft) sidewalk (minimum) and a six-foot (6 ft) (minimum) "street buffer" per the 2022 Complete Streets Design Guide, subject to available dedicated right of way.
 - b. Bus Transit System Adequacy Mitigation
 - i. Install a new ADA accessible bus shelter at MCDOT Bus Stop ID: 2001214, located along the frontage of 4925 Battery Lane, that fully addresses all bus transit system deficiencies per the 2022 LATR Guidelines: including but not limited to a real-time travel information display, trash receptacles, seating, overhead shelter, and USB outlets.
 - ii. Install a new ADA accessible bus shelter at MCDOT Bus Stop ID: 2001215 located along the frontage of 5015 Battery Lane that fully addresses all bus transit system deficiencies per the 2022 LATR

Guidelines: including a real-time travel information display, trash receptacles, seating, overhead shelter, and USB outlets.

- c. If, at the time the Applicant submits for permits to construct one of the required LATR Off-Site Improvements, the improvement is no longer necessary or desirable, because: i) it has been constructed or is under construction by another applicant or as part of a capital improvement project by a government agency, or, ii) the applicable master plan has changed and no longer requires or suggests the improvement, the Applicant can propose an alternative LATR Off-Site Improvement from the priority list of improvements provided in the subject Staff Report that is of similar value. This alternative improvement, if reviewed and approved by Planning Staff, can be substituted and shown on a revised Certified Preliminary Plan.
13. Before issuance of the first above-grade building permit or right-of-way permit (whichever comes first), the Applicant must make a payment of \$967,943 to the Montgomery County Department of Transportation towards the construction of the following improvements in the Bethesda CBD policy area, as illustrated on the Certified Preliminary Plan. The payments must be adjusted based on the Federal Highway Administration's National Highway Construction Cost Index from the mailing date of the Planning Board resolution to the date of application for the first above-grade building permit or right-of-way permit (whichever comes first). Proof of payment is required.
- a. Pedestrian System Adequacy Mitigation
 - i. Replace the existing sidewalk along the north side of Battery Lane along the frontage of 4857 Battery Lane with a seven-foot (7 ft) sidewalk (minimum) with a six-foot (6 ft) street buffer (minimum) between the motor vehicle traffic and the sidewalk.
 - b. Bicycle System Adequacy Mitigation
 - i. Provide a two-way separated bicycle lane on Woodmont Avenue from Battery Lane to Rugby Avenue (540 linear feet).
 - ii. Provide a two-way separated bicycle lane on Woodmont Avenue from Battery Lane to 350 feet north of Battery Lane (350 linear feet).
14. There shall be no clearing or grading of the site, except for demolition of the existing buildings, before recordation of plat(s).
15. The record plat must show necessary easements.

16. The record plat must show public ingress/egress access along two through-block connections /shared-use paths along the eastern side of the Property (eight-foot (8) minimum width) and the north/rear of the Property (ten-foot (10) minimum width).
17. The Applicant must include the stormwater management concept approval letter and Preliminary Plan Resolution on the approval or cover sheet(s).
18. 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.
19. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set
 - a) Include the approved Fire and Rescue Access plan in the certified set
 - b) Correct development data tables to show zero (0) GFA of commercial uses is proposed with the Application.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or provided 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 proposed lot has been reviewed for compliance with Chapter 50, the Subdivision Regulations. The layout of the single-lot subdivision, including its size, width, shape, orientation is appropriate for a 372-unit apartment building located within the CR zone.

a) The block design is appropriate for the development or use contemplated

The block design is existing and appropriate for the proposed development and use. The length, width and shape of the block are compatible with the development patterns in the Battery Lane District.

b) The lot design is appropriate for the development or use contemplated

The Preliminary Plan proposes one lot of approximately 1.95 acres lot area that is rectangular in shape and dimensioned approximately 213 feet wide by 390 feet long. The size and dimensions of the lot are appropriate for the Project location and proposed multi-family residential development. The full length of the Site's southern lot line abuts Battery Lane, a public right-of-way. The Preliminary Plan does not propose any flag lots.

c) The Preliminary Plan provides for required public sites and adequate open areas

i. Master Planned Sites

The 2017 *Bethesda Downtown Sector Plan* identifies two, pedestrian through-block connections to be provided on the Site; one bisecting it from north to south, and a second, east-west connection along the northern Property line (page 132, Sector Plan). The Project includes both of the pedestrian through-block connections in the locations identified by the Sector Plan.

The two through-block connections are designed to be generally consistent with the Guidelines for Public Through-Block Connections Shared by Pedestrians and Cyclists Only as shown in Figure 2.06 on page 31 of the 2017 *Bethesda Downtown Plan Design Guidelines*. An east-west path segment provided along the northern section of the Site is a portion of the master-planned pedestrian and bicycle connection between Woodmont Avenue to the east and Bethesda Trolley Trail to the west. The north-south path segment provided along the east side of the Site will connect Battery Lane to the future east-west trail between Woodmont Ave and the Trolley Trail.

ii. Local Recreation

The proposed subdivision does not include dedication of land for public recreation purposes. As detailed in accompanying Site Plan 820220160, adequate private, on-site recreational facilities for future residents of the development are proposed and include a rooftop amenity area and ground-level recreational spaces.

iii. *Transportation and Utilities*

The Sector Plan requires two publicly accessible through-block connections on the Site, which are provided on the Preliminary Plan. Public ingress/egress easements will be required to ensure public access along the through-block connections. Utilities are to be undergrounded.

d) *The Lot(s) and Use comply with the basic requirements of Chapter 59*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape, and orientation of the proposed lot are appropriate for the zone, location and residential use proposed for the Site. As shown in Site Plan Finding 2.d, Table 8, the proposed lot will comply with the development standards for CR zone optional method development and related development standards

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

a) *Land Use*

The Preliminary Plan substantially conforms to the 2017 *Bethesda Downtown Sector Plan*. The Property is within the area identified as the “Battery Lane District” and is designated as part of Site 6 on page 129 of the Sector Plan, which recommended rezoning the Site to the CR zone². The residential character of the proposed development is consistent with the Sector Plan’s recommendation regarding the appropriateness of the proposed use. The Preliminary Plan conforms with the Sector Plan’s overall goals for the Battery Lane District as follows:

i. *Preserve existing market-rate affordable housing.*

² The Site was rezoned from R-10 to CR-1.5 C-0.5 R-1.5 H-120 by Sectional Map Amendment H-122 for the Bethesda Downtown Plan.

The Project will include a total of 372 multi-family dwelling units, of which 15 percent (56 units) will be moderately priced dwelling units (MPDUs). These units will replace the existing 87 units on-site. The existing units are considered “market rate affordable” as are most apartments in the Battery District due to their age (built in the 1950s and 1960s) and general lack of modern conveniences, such as air conditioning. The 56 MPDUs will be new government-sanctioned affordable housing units, built to modern standards, where no MPDUs currently exist.

- ii. *Promote enhanced redevelopment opportunities to foster a quality mix of housing options.*

The Sector Plan (page 129) specifically recommends rezoning of the subject Site to the CR zone “to promote enhanced redevelopment opportunities to foster a quality mix of housing options”. The Preliminary Plan and accompanying Site Plan propose a comprehensive redevelopment of the Site which will replace the two existing garden-style apartment buildings containing 87 units, with a single building containing 372 multifamily dwelling units, to include 15 percent MPDUs. This is a total increase of 287 dwelling units on the Property over existing conditions. A mix of studio, one bedroom and two-bedroom units are proposed.

- iii. *Expand neighborhood green at Battery Lane Park.*

Battery Lane Urban Park is adjacent to the Site but is not abutting nor contiguous with it. No expansion of the park is contemplated with this Preliminary Plan. However, planned frontage improvements and provision of two through-block connections on the Site will enhance the pedestrian realm near the Park.

- iv. *Improve pedestrian and bike connectivity through the district and along the park.*

The two proposed through-block connections are consistent with the recommendations of the Sector Plan. An east-west path segment provided along the northern section of the Site is a portion of the master-planned pedestrian and bicycle connection between Woodmont Avenue to the east

and Bethesda Trolley Trail to the west. The north-south path segment provided along the east side of the Site will connect Battery Lane to the future east-west trail between Woodmont Avenue and the Trolley Trail. The Trolley Trail links to the Battery Lane Park to the south and continues through the NIH property to the north. The provision of these two master-planned through-block connections will improve bicycle and pedestrian connectivity in the Battery District and is supportive of the Sector Plan's broader goal to "link streets, through-block connection, greenways and trails to create a well-connected network" (page 17).

b) Environment

Battery Lane is designated as a Canopy Corridor in the Sector Plan. This designation is intended to create green corridors that connect parks, trails, stream buffers, and dense forest networks within and beyond the Bethesda Boundaries. The corridors also align with recommended bike and pedestrian priority streets where tree canopy becomes an essential element to enhance shade and comfort while also providing an ecological benefit.

To meet these goals, the Applicant has proposed improvements to the Battery Lane streetscape as well as a segment of the Sector Planned east-west through-block connection that will ultimately connect through to Battery Lane Urban Park.

c) Transportation

The Preliminary Plan substantially conforms with the 2017 *Bethesda Downtown Sector Plan*, including the specific density recommendations, applicable urban design, roadway, and general recommendations outlined in the Sector Plan for the Subject Property.

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

a) Roads and other Transportation Facilities

Battery Lane is a Minor Arterial with a master-planned width of 70 feet total. The Applicant will be dedicating an additional 10 feet of right-of-way along the Site frontage between the property line and the roadway centerline to address the master-planned width of the roadway. Per the 2017 *Bethesda Downtown Plan Design Guidelines*, Battery Lane is a Neighborhood Connector. The Streetscape will be improved to the Design Guidelines recommendations, by

providing a six-foot (6ft) continuous tree panel within the street buffer, and a seven-foot (7ft) pedestrian through zone within the sidewalk.

Transit Connectivity

The immediate area is well served by transit that includes the Red Line Bethesda Metrorail Station, several Metrobus and RideOn Stops (one located immediately east of the Site), bus stops served by the Bethesda Circulator, as well as the future Purple Line station.

Transportation Demand Management

As a project proposing a total square footage that is larger than 40,000 square feet within the Bethesda Transportation Management District (TMD), a Red Policy Area as designated by the 2021 *Growth and Infrastructure Policy*, the development is required to develop a Level 3 Results Transportation Demand Management (TDM) Plan with the Planning Board and MCDOT. The Applicant will also be required to participate in the Bethesda Transportation Management District (TMD).

Master-Planned Bikeways and Public Connections

The Project also demonstrates conformance with the 2017 *Bethesda Downtown Sector Plan* by providing two (2) of the master-planned Public Connections within the Battery Lane District; one that runs along the east side of the Site and another along the north (rear) of the Site, which ultimately connects to the North Bethesda Trolley Trail. The Sector Plan envisioned a path along the rear and west of the Site. Given the topography of the Site, the height of the stepback of the proposed building and the opportunity for canopy tree plantings on the east side of the Site, the east side of the Site presented a more open and vegetated design of the shared-use path. The purpose of the shared-use path is to provide additional non-motorized connections to the Bethesda Trolley trail, and the public shared-use paths to be provided on-site achieve that outcome. The nodes of the northern trail are designed in such a way that when the properties east and west of the Site redevelop, they will be able to connect to the northern (rear) pathway, thereby completing the master-planned connection to the Bethesda Trolley Trail.

The sidepath along the east side of the Property will be a minimum of eight-feet (8 ft) wide, buffered by a seven-foot planter and the sidepath along the rear of the Site (north) will be a minimum of 10 feet wide. As stated previously, the Applicant also proposes ample tree canopy and understory plantings along the public connections.

The Subject Site is located along a master-planned Bike Priority Street and within the Sector Plan's designated canopy corridors. The 2017 *Bethesda Downtown Plan Design Guidelines* recommend that streets within the canopy

corridors provide the maximum sidewalk width possible and consider opportunities for double rows of trees (page 32). The Applicant is showing a double row of trees along the Battery Lane Site frontage. The Site Plan also shows a seven-foot (7 ft) sidewalk buffered by a six-and-one-half-foot (6.5 ft) tree lawn, which falls within the range of widths required for the Sidewalk Zones per the 2017 *Bethesda Downtown Plan Design Guidelines*. The Applicant will also be required to underground the existing overhead utilities along the Site frontage.

The 2018 *Bicycle Master Plan* also envisions a separated bikeway along Battery Lane between Old Georgetown Road and Wisconsin Avenue. The Planning Board made a determination for the ultimate design, alignment and placement of the master-planned bikeway when they approved the Battery Lane District on April 23, 2020 (Preliminary Plan No. 120190240). The Board resolved that the two-way separated bikeway would be installed on the south side of Battery Lane.

Given the approved cross section for Battery Lane, the Applicant will not be required to install a bikeway along the Site frontage.

Private On-site Transportation Infrastructure

The Applicant proposed constructing an on-site drop-off area for residents and unscheduled deliveries, as well as an on-site loading space and on-site parking for residents and visitors. All of these facilities are accessed from a consolidated curb cut along the eastern side of the Site. Consolidating vehicular access reduces the exposure to crashes with pedestrians, bicyclists, and other motorists traveling on Battery Lane.

b) Local Area Transportation Review (LATR)

As a proposed development with 372 mid-rise dwelling units, the Project is estimated to generate 193 total peak hour person trips in the morning and 165 total peak hour person trips in the evening. After accounting for peak hour person trips currently associated with the existing 87 mid-rise multi-family units on the Site, (47 morning peak hour person trips and 59 evening peak hour person trips), the Project is estimated to generate 146 net new morning peak hour person trips and 165 net new evening peak hour person trips. As a result of the estimated transportation impact, the Project must submit a Transportation Impact Study with the Preliminary Plan to satisfy the Local Area Transportation Review (LATR).

Travel Mode Adequacy Test

The 2020 *Growth and Infrastructure Policy* requires evaluation of all transportation modes, including: auto-drive, transit, walking and biking. Mode-specific adequacy tests are required for any project estimated to generate 50 or more net new peak hour person trips. The only exception is that projects within Red Policy Areas (such as the Subject Site) are not required to evaluate motor vehicle adequacy. The adequacy tests for transit, pedestrians, and bicyclists are still required. The mode split of the total person trips for the Project is summarized by travel mode in Table 2. The Project's estimated transportation impact necessitates that the Transportation Impact Study evaluate three (3) of the four (4) travel mode adequacy tests.

- As the Site is located within a Red Policy area, a motor vehicle adequacy test is not required for the Project.
- Transit system adequacy was evaluated by inventorying two (2) bus stops located within 1,000 feet of the Property. Where shelters and associated amenities are not provided, the Applicant must install the standard amenities in coordination with MCDOT.
- Pedestrian system adequacy was evaluated within 750 feet of the Property. Mitigation will be required to achieve a Pedestrian Level of Comfort (PLOC) greater than 2 (Somewhat Comfortable), and/or deficiencies identified for streetlamps within the scoped boundary. The Pedestrian system adequacy also requires mitigation for ADA deficiencies identified within 375 feet of the Property.
- Bicycle system adequacy was evaluated by analyzing bikeways within 750 feet of the Property. Mitigation will be required to achieve a Level of Traffic Stress 2 (LTS-2) or lower, consistent with the Bicycle Master Plan.

Under Section 8 of 2022 Local Area Transportation Review Guidelines (LATR Proportionality Guide), the maximum cost of mitigation improvements the Applicant is required to construct or fund for a project consisting of 372 residential units is not to exceed \$1,875,773 (see calculation below).

LATR Proportionality Guide = (Extent of Development) (LATR
Proportionality Guide Rate) (LATR Proportionality Guide Adjustment
Factor)

\$1,875,773 = (372 units) (\$9,168) (55%)

For the Subject Preliminary Plan, the cost of construction and/or mitigation payments for mitigation project is not to exceed \$1,875,773. After evaluating the adequacy of each of the required transportation modes, the Applicant identified a comprehensive list of deficiencies, by which a prioritized list of mitigation improvements was submitted for review. In compliance with the 2022 LATR, the final list of seven (7) prioritized projects was finalized by the reviewing agencies and are now conditioned for approval of the Preliminary plan. The list below summarizes those projects which could be feasibly constructed, as well as those projects that could not be feasibly constructed (due to unattainable right-of-way or would require changes to traffic operations outside the control of the applicant) and are addressed by way of mitigation payments.

- i. Replace and upgrade sidewalk, north side of Battery Lane along the frontage of 4857 Battery Lane – Mitigation Payment \$445,361;
- ii. Replace and upgrade sidewalk, north side of Battery Lane along the frontage of 4925 Battery Lane – Construction \$391,467;
- iii. Replace and upgrade sidewalk, south side of Battery Lane, between Woodmont Avenue and the western property line of 8240 Wisconsin Avenue- Construction \$256,534;
- iv. Provide 540 linear feet of two-way separated bicycle lane on Woodmont Avenue between Battery Lane and Rugby Lane- Mitigation Payment \$244,784;
- v. Provide 350 linear feet of buffered sidepath on Woodmont Avenue, north of Battery Lane- Mitigation Payment \$449,784;
- vi. Install a new ADA accessible bus shelter on the north side of Battery Lane, adjacent to 4925 Battery Lane (MCDOT Bus Stop ID 2001214)- Construction – cost included with sidewalk upgrade listed as Item ii.
- vii. Install a new ADA accessible bus shelter with all LATR-required amenities, on the north side of Battery Lane, adjacent to 5015 Battery Lane (MCDOT Bus Stop ID 2001215)- Construction \$75,221.

As conditioned, all off-site mitigation projects must be permitted, bonded for construction, and all mitigation payments must be paid before the issuance of the first above grade building permit or right-of-way permit (whichever comes first). Montgomery County Planning, MCDOT, and MDOT SHA staff reviewed the TIS and approved the mitigation project list. Therefore, the

Applicant has satisfied the requirements of the LATR, and the public transportation facilities are adequate for the Site.

Master-Planned Roadways and Bikeways

In accordance with the 2017 *Bethesda Downtown Sector Plan*, the Applicant will dedicate an additional 10-feet of right-of-way along the Battery Lane Site frontage to achieve the master-planned total width of 70 feet (50 feet are currently dedicated to public right-of-way).

The Applicant proposes constructing two master-planned pedestrian and bikeway connections along the eastern and northern boundaries of the Site, which will connect to the Bethesda Trolley Trail with future development of the adjacent sites.

A two-way separated bikeway is master planned along the south side of Battery Lane (opposite the Site). The Battery District Project (Preliminary Plan No. 120190240) is required to construct this bikeway. Therefore, the Applicant for the Subject Application is not obligated to participate in the construction of the two-way separated bikeway.

c) Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the Growth and Infrastructure Policy resolution currently in effect and will be adequate to serve the Property.

Schools

The FY23 Annual School Test, approved by the Planning Board on June 16, 2022, and effective July 1, 2022, is applicable to this Application. This Application proposes 372 multifamily high-rise units. The project is served by Bethesda ES, Westland MS and Bethesda-Chevy Chase HS. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

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 FY23 Annual School Test, Bethesda ES and Westland MS and Bethesda-Chevy Chase HS do not require any UPP as identified in Table 5. If the project is estimated to generate more students than the identified

ceilings, then additional UPPs or partial payments at multiple tiers may 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 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 372 multifamily high-rise units that are not age-restricted, the proposed project is estimated to generate the following number of students based on the Property's location within an Infill Impact Area:

As shown in Table 5, on average, this project is estimated to generate 12 elementary school students, 5 middle school students and 5 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 5, therefore no additional UPPs are required, and neither are partial payments across multiple UPP tiers.

Based on the school capacity analysis performed, using the FY2023 Annual School Test, this application is not subject to a Utilization Premium Payment. Therefore, no UPP condition is required.

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. Forest Conservation

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

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), designated no. 420220090, was approved for the Subject Property on October 1, 2021. The plan identified the existing man-made and natural features associated with the Property, such as the buildings, associated parking, street trees and landscape elements. The on-site elements described on the NRI/FSD includes significant and specimen trees located near the north, east, and south site boundaries while the existing

residential buildings and surface parking make up most of the Site. There are no rare, threatened, or endangered species, no stream/buffers, or steep slopes on Site. There are no historic or cultural properties onsite.

Although there is no forest on-site or adjacent to the Property, this Application is subject to Chapter 22A Forest Conservation Law and includes a Preliminary/Final Forest Conservation Plan. Due to the tract area, associated offsite work, and the high-density residential land use category of this project the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated Afforestation Requirement of 0.31-acres, which shall be met via fee-in-lieu. Additionally, due to the loss of specimen trees, sized at 30" or greater in diameter-at-breast-height (DBH), this Application is also subject to the variance provisions of Chapter 22A.

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 eight (8) Protected Trees. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

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

The Applicant's proposal is to demolish the existing building and surface parking lots to construct a 120-foot multi-family building with structured parking, provide efficient site access/circulation for Fire and Rescue, and provide onsite stormwater management, as well as improve the public realm as envisioned in the Sector Plan. Further, the Applicant's proposal will provide environmental benefits via proposed mitigation plantings. With these factors considered, the Planning Board concludes the variance request would be granted to any applicant

in a similar situation and does not represent a special privilege granted to this Applicant.

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

As stated above, the requested variance and associated tree impacts are due to concerns related to the existing layout of buildings in relation to specimen trees on the Site's perimeter. Providing adequate site access/circulation and the required frontage improvements (including those associated with the Green Corridor recommendation of the Sector Plan), while also constructing a new multi-family residential building, necessitates variance tree impacts. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees where possible. Without this flexibility in the proposed design and construction, far greater subject tree impacts would be expected. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 proposed site design and layout on 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 proposed tree plantings, which includes mitigation plantings in addition to canopy trees and additional landscaping along the proposed through-block connection, will help maximize the permeability of the soil, which serves to reduce runoff. The planting of these trees will also help water quality goals by maintaining and increasing the level of shading and water retention and uptake. The Applicant has also proposed permeable asphalt in sensitive areas onsite in order to minimize runoff offsite. Additionally, the Subject Property does not currently contain any stormwater management features. The Applicant proposes a development which will meet current State and local stormwater management standards; this has been verified by the approval of a Stormwater Management Plan with the Department of Permitting Services. A measurable degradation in water quality is not

anticipated as the development will provide Best Management Practices (BMP) areas to meet ESD requirements for the Site in order to achieve water quality standards. This Application greatly reduces impervious surfaces, as the proposal removes surface parking and implements areas of green roof and landscape plantings within the design. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

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 one-inch diameter at breast height for every four-inches at breast height removed, using trees that are a minimum of three-inch caliper. Mitigation tree planting is required to include at least ten canopy trees of native species, sized a minimum of three-inches in caliper size, for a total of thirty caliper inches in mitigation tree plantings. No mitigation is required for Protected Trees impacted but retained.

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

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

This Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Division on July 26, 2022. There are no known stormwater management facilities existing on the Property. The Application will meet stormwater management goals through green roof and micro-bioretenention planter boxes to treat stormwater runoff without the use of waivers. A detailed stormwater management review will occur at the time of detailed plan review and all facilities will be designed using the latest MCDPS guidelines.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for three 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 JAN 05 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 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 the motion of Commissioner Branson, seconded by Commissioner Presley, with a vote of **5-0**; Chair Zyontz, Vice Chair Presley, and Commissioners Branson, Hill, and Piñero, voting in favor of the motion, at its regular meeting held on Thursday, December 22, 2022, in Wheaton, Maryland and via video conference.



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