

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No.23-039

Preliminary Plan No. 120220200

Waters Village

Date of Hearing: April 20, 2023

MAY 26 2023

RESOLUTION

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

WHEREAS, on August 24, 2022, KHR Waters Investments, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one (1) lot on 3.52 acres of land in the CRT 1.0 C-0.75 R-0.75 H-65 zone, located at 19621 Waters Road, Germantown, MD ("Subject Property"), in the Germantown Policy Area and *2019 MARC Rail Communities Sector Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220200, Waters Village ("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 April 10, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 20, 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 Pedoeem, seconded by Commissioner Bartley, with a vote of 4-0; Chair Zyontz, Commissioners Bartley, Hedrick and Pedoeem voting in favor with Vice Chair Piñero being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220200 to create one (1) 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.

General Approval

1. This Preliminary Plan is limited to one (1) lot for up to 29,880 square feet of commercial uses².

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 March 23, 2023 and incorporates them as conditions of the Preliminary Plan approval, except for Condition 8 of the letter requiring undergrounding of utilities along Waters Road frontage. The Applicant must comply with each of the recommendations in the letter, except for Condition 8, 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 February 10, 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 MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

² Commercial uses include a mix of retail and restaurant uses, which can be changed to other commercial uses provided that there is no net increase in the number of approved trips.

7. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 16, 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.

Other Approvals

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

Future Site Plan Approval Required

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.

Environment

10. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.

Transportation

Existing Frontage Improvements

11. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads.
 - a) All land necessary to accommodate a minimum of thirty-seven (37) feet as measured from the existing pavement centerline along the Subject Property frontage for Waters Road, or as shown on the certified preliminary plan.
 - b) All land necessary to accommodate full right-of-way dedication of the master-planned 70-feet along the Subject Property frontage for Waters House Avenue.

- c) All land necessary to accommodate fifty-seven and one-half (57.5) feet from the centerline along the Subject Property frontage for Wisteria Drive for a total master-planned width of 115 feet.
- 12. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of an eleven-foot (11-ft) wide shared-use path along the Property frontage on Wisteria Drive; an eight-foot (8-ft) sidewalk along the Property frontage on Waters House Avenue; and a ten-foot (10-ft) sidewalk along the Property frontage on Waters Road.
- 13. Before release of the first use and occupancy permit, the Applicant must construct all the above frontage improvements for Wisteria Drive, Waters Road, and Waters House Avenue including the following:
 - a. The Applicant must underground all utilities along the Property frontage on Waters Road equivalent to no more than \$400,000 (Four Hundred Thousand Dollars) in construction costs.
 - b. Before the release of the first building permit, the Applicant must provide plans illustrating utility placement along Waters Road, including undergrounding of utilities, with engineering cost estimates to be reviewed and approved by staff at Montgomery Planning and MCDOT.

Off-Site Improvements/LATR

- 14. Before the release of any above ground building permit associated with the second building (Phase 2), the Applicant must provide a contribution of \$122,882 (One Hundred Twenty-Two Thousand Eight Hundred Eighty Two Dollars) towards the construction of a shared-use path on Walter Johnson Road between Bowman Mill Drive and Middlebrook Road in lieu of mitigation of bike and pedestrian facilities identified in the Applicant's Transportation Study.

Record Plats

- 15. Except for demolition of the existing structures, there shall be no clearing or grading of the site before recordation of plat(s).

Easements

- 16. The record plat must show necessary easements.
- 17. The record plat must reflect common ingress/egress and utility easements over all shared driveways.

Certified Preliminary Plan

18. 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.*

19. 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) Provide approved Fire Department Access plan on the approved certified set.

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

This Preliminary Plan has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the CRT zoning, the land use recommendations in the 2019 MARC Rail Communities Sector Plan and the general building types contemplated for the Property, considering the Property's unique shape and frontage on three public roads. The lot as proposed will meet all the dimensional

requirements for area, frontage, and width requirements for the CRT zone as specified in the Zoning Ordinance.

Three of the four proposed buildings will be occupied by retail/service establishment uses, permitted uses in the CRT zone, under Section 59.3.1.6. The fourth building (C) is identified as a restaurant with a drive-thru. A restaurant is also a permitted use in the CRT zone; however, the drive-thru portion of the restaurant is a limited use in the CRT zone which requires Site Plan per Section 59.3.5.14.E.

As shown on the Preliminary Plan, the proposed lot can adequately accommodate the retail uses, drive-thru restaurant, and reasonably meet the width and setback requirements in the zone. Sufficient space has been provided for stormwater management facilities, parking, circulation and utility easements on the lot, after dedication.

As discussed in the Master Plan section below, the Applicant is providing all the necessary right-of-way dedication and easements necessary for public roads, streetscape improvements, pedestrian access, utilities and other public facilities along its three frontages.

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

The proposed development of Waters Village substantially conforms to the recommendations in the 2019 *MARC Rail Communities Plan*, the 2018 *Bicycle Master Plan*, and the 2021 *Complete Street Design Guide*. The development will be located north of Germantown Road (MD 118) in the GH designated area of the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* (see page 31 of the sector plan for the reference key). The GH designated area is a triangular site bounded by Waters Road on the west, Wisteria Drive on the east, and Germantown Road (MD 118) on the south. The proposed land use for the GH designated area is mixed-use. The Subject Property is within a five-minute walk of the Germantown MARC Station and across the street (Waters Road) from existing established residential development just outside of the 2019 *MARC Rail Communities Plan* boundary.

The Vision for the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* states “the Germantown plan area is envisioned as a compact, connected and walkable neighborhood with a mix of land uses. These uses include community- and commuter-serving retail, a range of housing options and parking structures for MARC commuters near the station. The historic integrity of the station area is maintained through the preservation and adaptive reuse of historic structures, while the design and placement of new buildings are sensitive to the historic scale and character. A variety of public spaces and dedicated open spaces accommodates community gatherings and enhance existing public events, such as the flea market that draws visitors to the area.

The recommendations in the Sector Plan for the Germantown area are geared toward supporting this vision and transforming the Germantown MARC Station area from an auto-dominated environment to an environment with an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders, and motorists. The six areawide recommendations that are most applicable to the Waters Village site are as follows:

Strengthen and enhance historic areas and residential neighborhoods by allowing infill development that echoes the existing patterns of nearby historic resources and residential neighborhoods:

- Emphasize quality design of new development.
- Encourage compatible land uses for infill development.
- Build new structures with compatible architectural styles, scales and heights.
- Reflect historical development patterns, such as reduced front building setbacks.
- Encourage the adaptive reuse of underutilized historic structures in a manner that is sensitive and appropriate to the historic context.

The Plan provides further guidance with the detailed recommendations:

Connect Germantown Recommendation A.2.a. (page 53)

Transform the MARC station area from an auto-dominated environment to an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders and motorists (Sites GA, GF, GG, GH, GI, GJ, GK, GL and GM).

- Provide a network of local roads and pedestrian/bicycle facilities that will result in improved circulation and safe access, and create a fine-grained network of small, walkable blocks on the north side of the railroad tracks. Implement context-sensitive improvements to streets that calm traffic, improve safety and respect historic resources.

Waters Road was extended southward, within the past five years, to intersect with Germantown Road at a signalized intersection to provide pedestrians with safer crossing access to the Germantown MARC Station. In accordance with the 2019 *MARC Rail Communities Sector Plan*, the Waters Village development is dedicating public right-of-way for a portion of the new street connection from Waterford Hills Boulevard to Wisteria Drive. The remaining portion of the new street will be provided when the property to the south of the Waters Village site is redeveloped.

Connect Germantown Recommendation A.2.c. (page 54)

Design complete streets that are safe and comfortable for all users.

- Plant tall-growing shade trees between pedestrian and bicycle facilities and the roadway to buffer pedestrians and bicyclists from vehicles and provide traffic calming.
- Design roadways with narrow lane widths within the Urban Road Code Areas.
- Design stormwater management facilities to safely accommodate on-street parking and pedestrians using the sidewalks.

- Ensure pedestrian safety and comfort on all area streets by limiting crossing distances to 60 feet or less (curb-to-curb or between the curb and a minimum six-foot wide refuge).

Waters House Avenue Connect Germantown Recommendation A.2.k. (page 64)

Connect Waterford Hills Boulevard to future Century Boulevard Extended via Waters House Avenue, classify Waters House Avenue as a two-lane business district street with parking on both sides to serve adjacent development.

The Application conforms with this recommendation. The three edges of the site, Wisteria Drive, Waters Road, and the portion of Waters House Avenue within the Subject Property, will have wide, shaded sidewalks. Street trees will be planted in a landscaped street buffer contiguous to the roadway so that the landscaped street buffer on each street of the site serves as a safe buffer between pedestrians and vehicles while also providing shade on the sidewalk. Along the Waters House Avenue frontage, additional trees and other landscaping will be provided to screen the surface parking lot area from the adjacent right-of-way.

Waters Road Connect Germantown Recommendation A.2.l. (page 65)

Instead of a five-foot sidewalk on Waters Road as noted in the 2019 *MARC Rail Communities Plan*, the Applicant will be providing a wider 10-foot-wide shared-use path with on-street parking and a 7-foot street buffer that will promote and better serve pedestrian connectivity and safety. To accommodate these frontage changes, the current 70-foot right-of-way for Waters Road will slightly increase to 72.5 feet, necessitating a change in overall right-of-way dedication.

Renew Germantown Recommendation B1.a. (page 69)

Promote compatible infill development around the Boyds and Germantown MARC Stations, while protecting existing residential uses, historically significant structures and natural areas.

Renew Germantown Recommendation B.1.e. (page 78)

Create an attractive public realm that enhances the character of the Germantown MARC area.

- Carefully design infill development to reflect the character of the historic areas and promote a fine-scaled, walkable environment.
- Frame streetscapes and public spaces with buildings.
- Locate new buildings to define the street edges and create active street fronts.
- Orient the primary building facades and entrances to face public streets and improve pedestrian accessibility.
- Incorporate the setbacks, scale and architectural elements of historic buildings into any new infill or redevelopment in the existing residential area.
- Provide height transitions from existing buildings to new development.

The Subject Property will be compatible with the existing adjacent residential neighborhood. The proposed development has its buildings facing the two public right-of-ways closest to the Liberty Mills residential development with the parking behind and to the sides of the buildings. The building heights of the development will be up to 25 feet in height which is less than the buildings across Waters Road.

The largest building, Building A, will be located along the Wisteria Drive frontage of the block. As a long linear building, the façade will be broken into bays using ribbed cementitious panels as pilaster strips. Between the pilaster strips, materials such as fiber cement panels, EIFS and clear and spandrel glass are used to create a rhythm to the facades and break down the massing of the building. Although the primary entrance to the building will be from the surface parking lot, the Wisteria Drive façade of the building will be active with large expanses of aluminum storefront windows that provide views into the retail space, and as may be further refined at Site Plan.

The three smaller retail pad sites, which are between 3,200 and 4,100 square feet, will be located along the Waters Road frontage of the building across from the multifamily buildings of the Liberty Mill complex. Pedestrian pass-throughs

will be provided between buildings to allow for connectivity between the shared use path on Waters Road and the surface parking lot in the middle of the block. These pedestrian pass-throughs will also have areas for café seating for the retail spaces. The three smaller retail buildings will have similar architecture to Building A. Although the main entrances to the three buildings will be from the surface parking lot internal to the block, there will be large expanses of storefront windows and murals or artistic treatments along Waters Road, as defined at Site Plan.

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

a) *Roads and other Transportation Facilities*

i. *Existing and proposed public transportation infrastructure*

Waters Road

The Subject Property has approximately 400 feet of frontage on Waters Road, classified as a Town Center Street in the 2021 *Complete Streets Design Guide* (“CSDG”) and a Business District Street in the 2018 *Master Plan of Highways and Transitways*. Waters Road has a master-planned right-of-way of 70 feet. To accommodate additional pedestrian frontage improvements, the master-planned right-of-way will increase to 72.5 feet, for a dedication of roughly 36.25-feet from the property line to the roadway centerline.

The Applicant will construct a 10-foot sidewalk along the western side of Waters Road between Wisteria Drive and westernmost point of Subject Property frontage, meeting the *Complete Streets Design Guide* requirement of a minimum 10-ft wide pedestrian facility. The 2018 *Bicycle Master Plan* makes no recommendations for the portion of the Subject Property's frontage on Waters Road south of Wisteria Drive.

The 2019 *MARC Rail Communities Sector Plan* includes the following recommendation on undergrounding utilities: “Evaluate relocating

existing overhead utilities underground to provide room for a shade tree canopy and unobstructed bicycle and pedestrian facilities. All new or reconstructed roads should have underground utilities, if feasible. Coordinated public-private ventures may be needed to complete undergrounding in some areas. Where overhead utilities remain, shade trees should be located to allow a mature tree canopy to develop" (page 54). The Board is requiring the Applicant to underground utilities along the Property's frontage on Waters Road with a cap of \$400,000 to improve reliability of the power grid, to create unobstructed bicycle and pedestrian facilities, and to provide adequate room for shade trees.

Wisteria Drive

The Subject Property has approximately 570 feet of frontage on Wisteria Drive, which is classified as a Town Center Boulevard per the 2021 *Complete Streets Design Guide*, with a recommended total right-of-way (ROW) width of 115 feet as per the 2018 *Master Plan of Highways and Transitways*. The Applicant will dedicate 57.5 feet of right-of-way, half of the total dedication, on the Application side of the road as measured to the roadway centerline. Additional dedication will be required from any application on the opposite side of Wisteria Drive as part of any future subdivision application.

The Applicant will construct a 11-foot sidepath along the southern side of Wisteria Drive between Waters Road and Waters House Avenue, within the existing right-of-way, which meets the Master Plan recommended width. The 2018 *Bicycle Master Plan* recommends a sidepath along the portion of the Subject Property's frontage along Wisteria Drive. Additionally, the 2019 MARC Rail Communities Sector Plan also recommends a sidepath along Wisteria Drive on the southern portion abutting the Subject Property.

Waters House Avenue

The Applicant will dedicate and construct approximately 430 feet of future Waters House Avenue, classified as a Town Center Street in the 2021 *Complete Streets Design Guide*, with a 70-foot-wide right-of-way. The road will be constructed according to the cross section recommended by the *Marc Rail Communities Sector Plan*, with the exception that the

sidewalks will be increased to an 8-foot-wide standard from the 5 feet. wide standard of the Plan to better accommodate foot traffic through this mixed-use neighborhood. The 2018 *Bicycle Master Plan* does not have any bike infrastructure recommendations for Waters House Avenue.

ii. ***Proposed private transportation infrastructure***

Two main drive aisles provide internal east-west vehicular and pedestrian connections. Two vehicular access points are proposed: one along Waters Road midway along the Subject Property, and one along future Waters House Avenue on the southeastern side of the Property. Additionally, the Waters House Avenue approach at Wisteria Drive will be restricted to right in/right out turning movements.

Curb radii have been reduced where feasible to 15 feet as recommended by the Urban Road Code. Stamped pavement will additionally highlight the high pedestrian traffic areas of the Property to increase driver awareness.

Truck loading for Building A will be located on the northwestern edge of the structure, accessed from the main drive aisle.

iii. ***Local Area Transportation Review (LATR)***

The Application was reviewed under the 2020-2024 *Growth and Infrastructure Policy* and associated 2022 *Local Area Transportation Review (LATR) Guidelines*. The proposed site replaces an existing business. The Application will generate 278 net new person trips during the AM weekday peak period and 382 net-new person trips during the PM weekday peak period based on the ITE Trip Generation Manual, 11th Edition, adjusted for the Germantown Town Center policy area (Table 1). A multimodal transportation impact study is required to satisfy the LATR Guidelines as the Application generates 50 or more net new person trips during a weekday peak hour. The Applicant submitted a study dated November 30, 2022.

*Table 1: Trip Generation – Person Trips**

ITE Trip Generation								Multimodal Trip Generation			
Development	Measure	AM Peak Hour			PM Peak Hour			AM Peak Hour		PM Peak Hour	
		In	Out	Total	In	Out	Total	Auto Driver	Total Person Trips	Auto Driver	Total Person Trips
Proposed											
Strip Retail Plaza	26,680 SF	38	25	63	88	88	176	57	89	157	244
Fast Food with D/T	3,200 SF	73	70	143	55	51	106	128	199	95	148
Total Trips		111	95	206	143	139	282	185	288	252	392
General Light Industrial	5,054 SF	-4	-1	-5	-1	-4	-5	-5	-8	-5	-8
Single Family Residential	1	0	-1	-1	-1	0	-1	-1	-2	-1	-2
Existing Trips	-	-4	-2	-6	-2	-4	-6	-6	-10	-6	-10
Net New Trips								179	278	246	382

*Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2022 LATR guidelines. Figures are rounded to nearest whole number. Source: Wells + Associates Traffic Impact Analysis submitted on July 21, 2022 and revised on November 30, 2022.

Eight intersections were studied, six within the Germantown Town Center Policy Area, an orange policy area. An additional two intersections are located within the Germantown West Policy Area, a yellow policy area. These intersections were studied using the HCM and CLV methodologies, respectively, in line with LATR requirements. All intersections will operate under the congestion standard:

- 1) Germantown Road & Waters Road/Bowman Mill Drive
- 2) Germantown Road & Wisteria Drive
- 3) Waters Road & Wisteria Drive
- 4) Waters Road & Waterford Hills Boulevard
- 5) Wisteria Drive/Driveway (Future Century Boulevard)
- 6) Waters Road & Site Driveway
- 7) Father Hurley Boulevard & Wisteria Drive
- 8) Father Hurley Boulevard & Sweetgum Circle/Middlebrook Road

Table 2: Highway Capacity Manual Methodology - Seconds of Vehicle Delay

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown Town Center Policy Area (HCM 63 Seconds)</i>						
Germantown Rd & Waters Road/Bowman Mill Drive	10	10	9	9	10	10
Germantown Road & Wisteria Drive	39	39	40	41	41	43
Waters Road & Wisteria Drive	3	3	3	3	3	4
Waters Road & Waterford Hills Boulevard	6	4	6	4	5	4
Wisteria Drive/Driveway (Future Century Boulevard)	2	6	1	6	3	7
Waters Road & Site Driveway	N/A	N/A	N/A	N/A	2	2
Father Hurley Boulevard & Wisteria Drive	28	25	28	25	28	25
Father Hurley Boulevard & Sweetgum Circle/Middlebrook Road	23	29	23	29	23	29

Table 3: CLV Methodology

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Germantown West Policy Area (1,425)</i>						
Germantown Road & Waters Road	417	633	427	655	421	699
Wisteria Drive & Germantown Road	568	762	606	815	644	869
Waters Road & Wisteria Drive	469	417	479	429	511	453
Waters Road & Waterford Hills Boulevard	249	351	249	351	277	397
Commercial Driveway/Wisteria Driveway/Future Waters House Avenue	411	657	416	669	486	755
Future Intersection	182	190	182	190	250	296
Father Hurley Boulevard & Wisteria Drive	721	727	736	763	742	777
Father Hurley Boulevard & Middlebrook Road	746	976	750	985	752	989

All eight intersections in the Germantown Policy Area operate below the 63 second congestion standards. All four intersections in the Germantown West Policy Area operate below the 1,425 CLV standard. No congestion mitigation is necessary, and a finding can be made for vehicle adequacy based on the results of the transportation impact study.

(1) Signal Warrant

Signal warrant analysis was performed for the currently unsignalized intersection of Waters Road and Wisteria Drive. The analysis found that the intersection met the nine warrants studied. The study determined that a traffic signal is needed at the intersection. However, it should be noted that Warrant 2 for four-hour vehicular volume nears, but does not exceed, the warrant threshold for two hours of the study period (4 – 6 pm). As a result, MCDOT is installing a traffic signal at the intersection. The four-way traffic signal will also include new crosswalks at Wisteria Drive and Waters Road, in addition to a crosswalk at Waters Road north of Wisteria Drive.

(2) Multimodal Analysis

The transportation impact study analyzed multimodal transportation facilities for pedestrians, bicyclists, bus transit, and ADA compliance. Deficiencies in these networks were found in all adequacy tests. These deficiencies are being addressed in part through the Applicant's off-site mitigation improvements as discussed below, which will provide improvements up to the LATR proportionality guide. The local bicycle and pedestrian networks were studied within a 1,000-foot buffer of the Subject property. Facilities along major roads, particularly Germantown Road and Wisteria Drive, include deficiencies, exceeding the minimum Level of Traffic Stress standards for cycling and Pedestrian Level of Comfort for walking.

Additionally, the study area has a significant history of crashes within the 1,000-feet of the. Between 2017-2022, 114 non-fatal crashes were recorded, with three reported as 'suspected severe injury.' Of the 114 total crashes, 106 involved motor vehicles. Seven crashes involved pedestrians, while one involved a bicyclist.

Speed studies were conducted along Waters Road, Wisteria Drive, and Germantown Road within a 1,000-foot radius. The study commenced on February 8th, 2022, and ended on February 10th, 2022, both beginning and concluding at midnight. The 85th percentile for vehicular speed along each of the studied segments exceeded 120% of the posted speed limit. For context, the posted speed limits for each road are 25 MPH (Waters Road), 30 MPH (Wisteria Drive), and 35 MPH (Germantown Road). Additional speed enforcement along these segments would be necessary to address these deficiencies but are beyond the scope of this Application.

According to the proportionality guidelines of the 2022 LATR, the cost of mitigation improvements is not to exceed \$122,882 in off-site LATR mitigation improvements. The Applicant proposes to offsite requirements by providing this funding towards the construction of a sidepath along Walter Johnson Road, from Bowman Mill Drive to Middlebrook Road.

iv. *Other Public Facilities and Services*

Other public facilities and services are available and adequate to serve the proposed lot. The Lot will be served public water and sewer. There is a 10-inch waterline within the existing Waters Road right-of-way, which the Applicant will tie into and extend with an 8-inch water to serve the new buildings. From the existing 15-inch sewer main within the Wisteria Drive right-of-way, new 4-8-inch sewer lines will be extended to serve the individual buildings. The use of public water and public water is consistent with the existing W-1 and S-1 service categories designated for the Property.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Property has adequate access for emergency vehicles as shown on the approved Fire Department Access Plan dated March 16, 2023.

There are existing 10-foot-wide public utility easements along the west side of the Waters House Avenue frontage. New utility easements will be provided on the frontage of Waters Road, Wisteria Drive and the continuation of Waters House Avenue, which will be sufficient to accommodate future utility installation. Storm drain easements will be provided to connect the existing and proposed infrastructure on-site.

Electric and telecommunications services are available and adequate to serve the Subject Property. 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*. The Application can be adequately served by all applicable public facilities and services.

4. *All Forest Conservation Law, Chapter 22A requirements are satisfied.*

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. 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.

a) Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420211290 for this Property was approved in March 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD included 3.52 acres, of which 98 percent of this land drains to the Little Seneca Creek watershed which is classified as Use Class III-P waters by the State of Maryland. Approximately 3,350 square feet (0.08 acres) in the eastern corner of the Property located near the intersection of Wisteria Drive and Water House Avenue is within the Middle Great Seneca Creek watershed, which is designated Use Class IV-P waters by the State of Maryland. The Subject Property does not contain any forest; however, there are four trees with a diameter at breast height (“DBH”) of 24 inches or more located on or immediately adjacent to the Subject Property, two of these trees have a DBH greater than 30 inches. The Property does not contain any streams, wetlands, floodplain, stream buffers, steep slopes, or highly erodible soils. There are no documented rare, threatened, or endangered species on the Property.

Forest Conservation Plan

The Applicant submitted a Preliminary and Final Forest Conservation Plan (“FCP”) with the current development plan applications for Preliminary Plan No. 120220200 and Site Plan No. 820220260. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and comply with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned CRT-1.0 and is assigned a Land Use Category of Commercial and Industrial (“CIA”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 15% of the Net Tract Area.

The tract area for forest conservation purposes includes the 3.49-acre Property plus 0.70 acres of offsite disturbance associated with this Application, for a total net tract area of 4.19 acres. There is no existing forest within the net tract area which results in an afforestation requirement of 0.63 acres. The Applicant

proposes to meet the planting requirement offsite by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment.

Of the four trees identified with a DBH of 24 inches or more, three of these will be removed as part of this Application; two of which have a DBH greater than 30 inches (Tree #1 and #4) and are discussed in the Forest Conservation Variance section. Tree #2, a 26" DBH Norway maple in fair condition will be removed due to necessary grading and construction of a required stormwater management feature. The fourth tree (Tree #3) is located offsite and will not be impacted by the proposed disturbance.

b) Forest Conservation Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these trees, including removal of the subject tree or disturbance within the 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. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated July 1, 2022. For this Application, the variance provision applies to all impacted trees that are 30 inches DBH and greater. The Applicant proposes to remove two trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 4).

Table 4 – Protected Trees to be removed

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
1	Norway maple	<i>Acer platanoides</i>	39 in.	100%	Remove tree for building demo, new retail
4	American elm	<i>Ulmus americana</i>	39 in.	60%	Remove tree for Waters House Avenue construction

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 existing site conditions, necessary layout of the proposed development on the Property, and development standards of the zone.

Tree #1, a 39" DBH Norway maple is located midway along the Property frontage on Waters Road. This is within the developable area of the Property, including the existing access that will be adjusted and improved. It is near an existing building that is proposed to be demolished to allow for the redevelopment to occur. Tree #4, a 39" DBH American elm is located just offsite, within the right-of-way of future Waters House Avenue, which is required to be improved as part of this Application as a master-planned roadway and to provide a second point of access to the Property.

The existing conditions including the current access from Waters Road, the configuration of the Property, and necessary secondary access requirements have largely determined the layout of the development. In addition, the existing structures and gravel parking that need to be demolished to allow for the redevelopment have resulted in the need for a variance to remove Protected Trees. The inability to remove these trees would potentially render portions of the site undevelopable. 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 commercial use for which it is zoned, 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.

a) Variance Findings

The following determinations are based on the required findings for granting of the requested variance:

i. 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 and necessary site design requirements. The two Protected Trees that will be removed are located within the developable area of the site and the right-of-way for Waters House Avenue. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

2. 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, including street frontage improvements.

3. Is not based on a condition relating 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. 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. The Application proposes mitigation 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 Provisions

There are two Protected Trees proposed for removal in this variance request and the Applicant is proposing to mitigate for the loss. The Application proposes to remove 78 caliper inches of Protected Trees that will be mitigated for at a rate that approximates the form and function of the trees being removed. These trees will be replaced 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 19.5 inches with the installation of seven 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. The mitigation trees will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. As conditioned, the mitigation trees will be protected as part of a 5-year maintenance and management agreement.

The Board approves the variance request with mitigation.

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

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a Stormwater Management Concept/Site Development Stormwater Plan approval from MCDPS Water Resources Section dated February 10, 2023. The Application will meet stormwater management goals via micro-bioretention facilities and within planter boxes. Enhanced filters will be added where possible. An infiltration trench will be used for improvements within the Waters House Avenue right-of-way. The application of these approaches will provide for full environmental site design (ESD) to the maximum extent practicable (MEP).

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.

Not applicable to this Property.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

Not applicable to this Property.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 26 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 motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of **5-0**; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick, and Pedoeem, voting in favor of the motion, at its regular meeting held on Thursday, May 18, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-040

Site Plan No. 820220260

Waters Village

Date of Hearing: April 20, 2023

MAY 26 2023

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on August 24, 2022, KHR Waters Investments, LLC ("Applicant") filed an application for approval of a site plan for the construction of three (3) retail buildings and one (1) restaurant building with a drive-thru on 3.52 acres of land in the CRT 1.0 C-0.75 R-0.75 H-65 zone, located at 19621 Waters Road, Germantown, MD ("Subject Property"), in the Germantown Policy Area and 2019 *MARC Rail Communities Sector Plan* ("Master Plan") area; and

WHEREAS, the site plan application for the Subject Property was designated Site Plan No. 820220260, Waters Village ("Site 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 April 10, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 20, 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 Pedoeem, seconded by Commissioner Bartley, with a vote of 4-0; Chair Zyontz, Commissioners Bartley, Hedrick and Pedoeem voting in favor with Vice Chair Piñero being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820220260 for 26,680 square feet of retail and 3,200 square feet of drive-thru restaurant, 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.

Density, Height & Housing

1. Density

The Site Plan is limited to a maximum of 29,880 square feet of total development on the Subject Property, including 26,680 square feet of retail and 3,200 square feet of drive-thru restaurant uses².

2. Height

The development is limited to a maximum height of 30 feet, as measured from the building height measuring point, as illustrated on the Certified Site Plan.

Open Space, Facilities and Amenities

3. Public Open Space, Facilities, and Amenities

- a) The Applicant must provide a minimum of 12,289 square feet of public open space (10% of net lot area) on-site.
- b) The Applicant must deliver all 12,289 square feet of public open space before issuance of the use and occupancy certificates (excluding core and shell use and occupancy certificates) for retail Building B1 and Building B2, whichever comes first.

4. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to benches, artistic treatments or murals, tables, pavers, and landscaping within the public open space throughout the Subject Property.

Environmental

5. Forest Conservation & Tree Save

- a) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
- b) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures

² The retail and restaurant use space can be changed to other commercial uses provided that there is no adverse impact on the Site Plan and APF findings, and it is approved by Planning Staff.

not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

- c) The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
- d) Before recordation of the plat and the start of any demolition, clearing, grading, or construction or issuance of any sediment control permit for improvements shown on the Site Plan, whichever comes first, for this development Application, the Applicant must:
 - a. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all mitigation tree plantings, including variance tree mitigation plantings credited towards meeting the requirements of the Final Forest Conservation Plan. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - b. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls, credited towards meeting the requirements of the Final Forest Conservation Plan.
 - c. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Seneca Creek watershed to satisfy the afforestation requirement for a total of 0.63 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank located elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Seneca Creek watershed or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
- e) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance

tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance mitigation plantings must be a minimum of 3 caliper inches totaling twenty (20) caliper inches, as shown on the approved Final Forest Conservation Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

Transportation & Circulation

6. Transportation

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated February 17, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

7. Pedestrian & Bicycle Circulation

- a) The Applicant must provide one (1) long-term and fourteen (14) short-term bicycle parking spaces.
- b) The long-term space must be in a secured, well-lit bicycle room within retail Building A, and the short-term spaces must be inverted-U racks (or approved equal) installed along the retail Building B1 in a location convenient to the main entrance (weather protected preferred). The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.
- c) Before the issuance of any use and occupancy permit (excluding core and shell use and occupancy certificates), the Applicant must provide the following master planned pedestrian and bicycle facilities, the exact location, design and construction of which must comply with requirements of the Montgomery County Department of Transportation, Division of Traffic Engineering and Operations:
 - i. Wisteria Drive:
 - a. 11-foot-wide sidepath with 8-foot-wide buffer from vehicular traffic.
 - ii. Waters Road:
 - a. 10-foot-wide sidewalk with 7-foot-wide buffer from vehicular traffic.

iii. Waters House Avenue:

- a. 8-foot-wide sidewalk with 6-foot-wide buffer from vehicular traffic.

8. Site Design

- a) The exterior architectural character, proportion, materials, and articulation must be substantially like the schematic elevations shown on the submitted architectural drawings, with the addition of murals and/or artistic treatments on the Building A façade along Wisteria Drive, as determined by M-NCPPC Staff.

9. Lighting

- a) Before certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on all fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.
- e) Site lighting and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

10. Site Plan Surety and Maintenance Agreement

Before issuance of any above-grade building permit, sediment control permit (other than associated with demolition), the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to the mural and/or artistic wall treatment on the Building A façade along Wisteria Drive, private screening walls, plant material, on-site lighting, site furniture, trash enclosures, retaining walls, railings, and associated improvements of development, including private storm drainage facilities, street trees and streetlights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each of the three phases of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

11. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved before the approval of the Certified Site Plan.

12. Certified Site Plan

Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) The Applicant must provide murals and/or artistic wall treatments on the exterior wall of Building A, along Wisteria Drive, subject to Staff approval. The minimum transparency requirements apply, in addition to murals and/or other artistic treatments. Show the layout and location of the long-term bicycle storage area in the Building A.
- b) Include the stormwater management concept approval letter, development program, and Site Plan resolution on the approval or cover sheets.
- c) Add the following notes:
 - i. "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."

- ii. "Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services."
- iii. "The Applicant must schedule a preconstruction meeting (pre-con), preferably on-site, with staff from the Department of Permitting Services (DPS) responsible for Certified Site Plan conformance and compliance, upon approval of the Certified Site Plan (CSP). The pre-con must occur before any site development work commencement and before any work that is covered by the site plan surety and maintenance agreement. The Applicant, along with their representatives, must attend the pre-con with DPS CSP Staff. A copy of the approved Certified Site Plan along with any subsequent amendments is required to be on-site at all times."

13. Include approved Fire Department Access plan in the Certified Site Plan.

14. Modify data table to reflect development standards approved by the Planning Board.

15. Ensure consistency of all details and layout between Site and Landscape plans.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Waters Village No. 820220260, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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. ***When reviewing an application, the approval findings apply only to the site covered by the application.***
The findings herein apply only to the Subject Property.
2. ***To approve a Site Plan, the Planning Board must find that the proposed development:***
 - a) ***satisfies any previous approval that applies to the site;***

All previous approvals will be superseded by approval of the present Site Plan application, and will comply with the concurrently approved Preliminary Plan No. 120220200, as may be amended.

b) satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

c) satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;

This section is not applicable as the Subject Property's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.

d) satisfies applicable use standards, development standards, and general requirements under this Chapter;

The Site Plan Application satisfies the use standards, development standards and general requirements for the retail and drive-thru restaurant uses in the Commercial Residential Town (CRT) Zone, under the Standard Method Development in Section 4.5.3. Three of the four proposed buildings will be occupied by retail/service establishment uses, which are permitted uses in the CRT zone, under Section 59.3.1.6. The fourth building (C) is identified as a restaurant with a drive-thru. A restaurant is also a permitted use in the CRT zone; however, the drive-thru portion of the restaurant is a limited use in the CRT zone, which requires Site Plan per Section 59.3.5.14.E as discussed below. The following table, Table 1, shows the Application's conformance to the development standards of the zone.

Table 1 - Data Table for CRT-1.0,C-0.75,R-0.75, H-65 Zone, Standard Method, Section 59.4.5.3 (General Building Type)

Development Standard	Required	Proposed
1. Site		
Open Space (min)		
Public Open space, tract > 10,000 SF	10% (12,289 SF) of Site Area	10% (12,289 SF)
2. Lot and Density		
Lot (min)		
Lot area (Site)	n/a	122,899 SF (2.82 AC)
Out Parcel		3,960 SF (0.09 AC)
Previous Dedication		13,728 SF (0.32 AC)
Proposed Dedication		26,445 SF (0.60 AC)
Current Gross Tract Area		167,032 SF (3.83 AC)
Density (max)		
CRT Density, FAR	1.0 FAR	0.18 FAR (29,880 SF)
-Commercial	0.75 FAR	0.18 FAR (29,880 SF)
-Residential	0.75 FAR	NA
3. Placement		
Principal Building		
Setbacks (min)		
Front setback to Wisteria Drive	0 FT	Building A: 11 FT
Rear setback to Wisteria Drive	15 FT	Building B1: 30 FT
Front setback to Waters Road	0 FT	Building B1: 22 FT Building B2: 22 FT
Side setback to Waters House Avenue	0 FT	Building A: 25 FT
Rear setback to CRT zone	0 FT	Building A: 25 FT
Parking Setbacks for Surface Parking Lots (min)		
Front and side street setbacks	must be behind building line of building in the BTA	All parking is located behind front building line in BTA
Abutting ROW	must accommodate landscaping required under Section 6.2.9	Wisteria Drive: Screening panels and landscaping provided Waters House Avenue: Landscaping screening provided
Build-to-Area (BTA, max setback and min % of building façade)		

BTA on Waters Road		
Front setback (max)	20 FT or as modified ³	Building B1: 22 FT** Building B2: 22 FT** Building C: 12 FT
Building in front street BTA (min)	70% ³	Building B1: 100% with modified BTA Building B2: 100% with modified BTA Building C: 100%
BTA on Waters House Avenue		
Side street setback (max)	20 FT	Building A: 36 FT**
Building in side street BTA (min)	35% or as modified ³	Building A: 100% with modified BTA
BTA on Wisteria Drive		
Front setback (max)	20 FT	Building A: 11 FT
Building in front street BTA (min)	70%	Building A: 100%
4. Height		
Height (max)		
Principal buildings	Mapped (65 FT) and Section <u>4.1.8.B</u>	Building A: 30 FT Building B1: 19 FT Building B2: 19 FT Building C: 20 FT
5. Form		
Building Orientation		
Entrance facing street or open space	Required unless modified ⁴	Building A: allowed as shown on Certified Site Plan** Building B1 & B2: Facing Waters Rd

³ In accordance with 4.5.3.C.3.a. and 4.5.3.C.3.b., the Build-to Area (BTA) requirements may be modified by the Planning Board during site plan review under Section 7.3.4. In approving a site plan submitted under this subsection, the Planning Board must find that the plan: (1) deviates from the Build-to Area requirements only to the extent necessary to accommodate the physical constraints of the site or the proposed land use; and (2) incorporates design elements that engage the surrounding publicly accessible spaces such as streets, sidewalks, and parks.

⁴ Section 4.5.3.C.5.a. allows for Building Orientation and Transparency requirements to be modified by the Planning Board during site plan review if the Planning Board finds that the plan 1) deviates from the Building Orientation and Transparency requirements only to the extent necessary to accommodate the physical constraints of the site or the proposed land use and 2) incorporates design elements that engage the surrounding publicly accessible spaces such as the streets, sidewalks, and parks.

Entrance spacing (max)	100 ft unless modified ⁴	Building C: Facing open space Building A: One entrance allowed as shown on Certified Site Plan Building B1: max 58 FT Building B2: max 58 FT Building C: One entrance
Transparency, for Walls Facing a Street or Open Space		
Ground story, front (min)	40%	Building A: 40.2% Building B1: 40.1-40.4% Building B2: 41.2% Building C: 40%
Ground story, side/rear (min)	25%	Building A: 42.5% Building B1: 30% Building B2: 30% Building C: 43%
Blank wall, front (max)	35 ft.	Building A: 25 FT Building B1: 20 FT Building B2: 20 FT Building C: 28 FT
Blank wall, side (max)	35 ft.	Building A: 30 FT Building B1: 20 FT Building B2: 20 FT Building C: 35 FT

As depicted in Table 1, the Applicant is seeking relief from certain building placement and form standards (identified with ** in the Data Table) as part of the Application. The Applicant is requesting relief from two development standards which may be modified by the Planning Board during site plan review:

(1) Build-to-Area:

The Planning Board modified certain Build-to-Area requirements along Waters House Avenue for Building A and Waters Road for Buildings B1 and B2, pursuant to Section 59.4.5.3.C.3.a, and Section 59.4.5.3.C.3.b which state:

- a. *The Build-to Area maximum front or side street setback may be increased by the minimum setback necessary to avoid a platted public transportation or utility easement, or a platted public transportation or utility reservation.*
- b. *The Build-to Area requirements may be modified by the Planning Board during site plan review under Section 7.3.4. In approving a site plan submitted under this subsection, the Planning Board must find that the plan: (1) deviates from the Build-to-Area requirements only to the extent necessary to accommodate the physical constraints of the site or the proposed land use; and (2) incorporates design elements that engage the surrounding publicly accessible spaces such as streets, sidewalks, and parks.*

The Planning Board approves a modification of build-to-area requirements on both roads, based on the following justification. Development of the site is constrained because the lot is triangular, with public road frontage on all sides. Locating the buildings on the site in a configuration that places retail along the street, provides safe, adequate, and efficient circulation behind the buildings and the necessary utility easements, restricted the location of potential stormwater management facility. The site is further constrained by the grade of the site and soil conditions, forcing the Applicant to locate one of the stormwater environmental site design facilities between Building A and Waters House Avenue. For Building A, the maximum side street setback has been increased by 16 feet along Waters House Avenue for a 36-foot setback, bringing the building outside the 20-foot maximum BTA. The Applicant is seeking the minimum necessary modification of the side BTA requirements on Waters House Avenue to accommodate the increased setback necessary to provide stormwater facilities and a ten (10) foot PUE. The building setback will be mitigated by the plantings in the stormwater management bioretention facility which improves the aesthetics along the building edge and buffers pedestrians on the sidewalk from the face of the building side. With the modified BTA, the building will be 100% within the approved BTA.

The maximum setback has been increased by two (2) feet for Buildings B1 and B2 along Waters Road making them 22 feet from the roadway, bringing the buildings outside of the BTA. The Applicant is seeking modification of the BTA requirements to accommodate physically constraining grading issues. The Applicant will incorporate stairs and seating for Buildings B1 and B2 along Waters Road to activate the space for pedestrians. Additionally, the placement of the buildings creates a continuous building edge consistent with the intent of BTAs. With the modified BTA, both buildings will be 100% within the approved BTA.

(2) Building Orientation

The Planning Board supports the Applicant's request for relief from Building Orientation development standards for Building A, which would require an entrance on Wisteria Drive. In accordance with Section 59.4.5.3.C.5.a., the Building Orientation requirements state that:

Building Orientation and Transparency requirements may be modified by the Planning Board in a site plan review under Section 7.3.4. In approving a site plan submitted under this subsection, the Planning Board must find that the plan: (1) deviates from the Building Orientation and Transparency requirements only to the extent necessary to accommodate the physical constraints of the site or the proposed land use; and (2) incorporates design elements that engage the surrounding publicly accessible spaces such as streets, sidewalks, and parks.

These requirements may be modified by the Planning Board during site plan review. The Applicant is requesting that the Planning Board modify certain Building Orientation requirements along Wisteria Drive for Building A, pursuant to Section 59.4.5.3.C.5.a. to allow one building entrance into the parking lot and not on Wisteria Drive. The Applicant justifies their position based on security concerns as it relates to multiple entrances to their buildings, as stated at the hearing. The Applicant expects the majority of patrons to drive and access the building from the parking lot. Additionally, the revised conditions requiring artistic treatments and/or murals on the Building A facade along Wisteria Drive will engage the surrounding street and sidewalk along Wisteria Drive.

The Planning Board approves the building entrance and spacing requirements on Building A. In lieu of providing two entrances along the frontage of Wisteria Drive, the Applicant is providing artistic treatments and/or murals on the building face to provide street activation and engage public interest. As conditioned, prior to Certified Site Plan, the Applicant will work with Staff to provide the appropriate artistic wall treatments and/or murals that will activate the street front. Introduction of the mural and/or artistic wall treatments will not reduce the minimum transparency requirements.

i. *Division 3.5 Drive-Thru, Uses and Use Standards*

A restaurant is a permitted use in the CRT zone. This Application's proposed restaurant includes a proposed accessory drive-thru, which is a limited use in the CRT zone. In addition to the development standards noted above, there are use standards for a drive-thru use. The drive-thru use meets the following limited use standards:

- 1. *Use Standards - Section 59-3.5.14.E Drive-Thru, Accessory Commercial Uses***
 - i. *Where a Drive-Thru is allowed as a limited use, it must satisfy the following standards:***
 - 1. A Drive-Thru, including the queuing area, must be located a minimum of 100 feet from any Property that is vacant or improved with a residential use in the Agricultural, Rural Residential, or Residential Detached zones.**

The Subject Property does not abut any property that is in an Agricultural, Rural Residential, or Residential Detached zone.
 - 2. For a Restaurant with a Drive-Thru, access to the site from a street with a residential classification is prohibited.**

The Drive-Thru Restaurant is not accessing a street with a residential classification.
 - 3. A drive-thru service window, drive aisle, or queuing area located between the street and the front main wall of the main building is prohibited.**

In this case, the main wall (front) of the building is facing Waters Road, as envisioned by the Master Plan. The restaurant's drive-thru service window, drive aisle and queuing area are located internally and behind the front main wall of the building.
 - 4. A drive-thru service window, drive aisle, or stacking area may be located between the street and the side wall of the main building on a corner lot if permanently screened from any street by a minimum three-foot-high wall or fence.**

The drive aisle, service window and stack area are located behind the building and internal to the Property.

5. Site plan approval is required under Section 7.3.4

Approval of this Site Plan application by the Planning Board will satisfy this requirement.

ii. Division 6 - General Development Standards

1. Division 6.1 Site Access

The Site is accessible from Waters Road and Waters House Avenue.

The interior drive-aisles connect the proposed access points, allowing for adequate circulation throughout the Property. The sidepaths and pedestrian access points provide improved pedestrian and cyclist circulation to the Property along Waters Road and Wisteria Drive.

Internally, the sidewalks on both sides of all the proposed buildings allow for a safe pedestrian network from the sidepaths to the sidewalks around the proposed buildings and across the surface parking lot.

2. Division 6.2 Parking, Queuing and Loading

As summarized in Table 2, the Application satisfies the parking and loading requirements necessary to support the three retail buildings and the drive-thru restaurant.

Table 2: Parking Analysis

Parking Standards	Required/Allowed	Proposed
<u>Vehicle Parking Spaces</u> <u>Retail Sales and Service Use:</u>	93 min – 160 max (3.5 – 6.0 spaces per 1,000 SF)	94 spaces
<u>Eating and Drinking Use:</u>	8 min – 23 max (4-12 spaces per 1,000 SF)	8 spaces
Parking Breakdown (spaces)		
Standard (8.5 ft x 18 ft)	-	87
Parallel (8 ft x 21 ft) Public ROW	-	19
Accessible (8 ft x 18 ft)	4	4
Motorcycle/scooter (4 ft x 18 ft)	2	2
Car-Share (8.5 ft x 18 ft)	1	1

Electric charging (9 ft x 18 ft)	1	1
Bicycle Parking		
Bicycle Parking Spaces	Short term: 4 Long term: 1	Short term: 14 Long term: 1
Loading Spaces (12 ft x 55 ft)	1	1
Drive-Thru Queuing Spaces (8.5 ft x 18 ft)	5	5
Landscaping		
Parking Lot Internal Landscaped Area	1,948 SF or 5% of 38,967 SF	3,454 SF
Parking Lot Landscape Island Required	100 SF min.	141 SF min.
Parking Lot Tree Canopy at 20 years	9,742 SF or 25%	9,915 SF
Parking Lot Perimeter Planting width, abutting ROW (Waters House Avenue)		
Minimum width	10 ft	11 ft
Minimum hedge height	6 ft	6 ft
Canopy tree spacing	30 ft o.c. (6 trees)	30 ft o.c. (6 trees)

Drive-Thru Restaurant (Building C)

Per Section 6.2.7. at least five queuing spaces are required in the restaurant drive-thru lane. The Application provides space for at least five vehicles to queue within the drive-thru lane, without impeding vehicle movement in the adjacent internal drive-aisles. Additionally, there are marked crosswalks to the north and east of the drive-thru restaurant, both buffered from the drive-thru lane with stormwater facilities and open space with seating. There is a pedestrian crossing through the drive-thru lane from the restaurant to the parking lot. This proposed crosswalk is raised and includes pavers indicating the walkway as well as markings alerting drivers of the crosswalk.

Building A

The proposed Building A retail building features a loading area to the north that can accommodate two trucks. Beside the truck loading area, to the north, is a drop off lane for donations to the building, including a loading space for a parked vehicle. The loading area and drop-off lane are screened with retaining walls and screening panels. Parking for the building is shared with the other proposed retail buildings and the restaurant.

Buildings B1 & B2

Parking for the retail buildings is shared with the other proposed retail and restaurant buildings.

Section 6.2.9.C.1 Landscaped Area

The proposed surface parking lot has landscaped islands that surpass the minimum requirement of 100 contiguous square feet. The landscaped area of the parking lot surpasses the minimum of five percent (5%) of the total area of the surface parking lot with 3,454 square feet proposed.

Section 6.2.9.C.2 Tree Canopy

Parking lot tree canopy exceeds 25 percent coverage at 20 years of growth. The Applicant is proposing 26 percent parking lot tree canopy coverage at 20 years of growth.

Section 6.2.9.C.3 Perimeter Planting

Waters House Avenue

A perimeter planting area of at least six feet (6 ft) between Waters House Avenue and the edge of the proposed parking lot is provided in accordance with Section 6.2.9.C. The perimeter planting area includes a row of seven Red Oaks canopy trees planted every 30 feet on center and two Red Maple at the driveway entrance. There are also Skip-Laurel and Son's Dwarf Wax Myrtle plantings proposed along the perimeter.

Wisteria Drive

A perimeter planting area of at least six feet (6 ft) between Wisteria Drive and the edge of the proposed parking lot is provided in accordance with Section 6.2.9.C. The perimeter planting area includes a row of six Snowcloud Allegheny Serviceberry and Moonglow Sweetbay Magnolias ornamental trees and one Red Maple planted less than every 30 feet on center. There are also Skip-Laurel, Dwarf Yaupon Holly, and Southern Gentleman Inkberry plantings proposed along the perimeter.

Section 6.2.9.C.4 Lighting

The proposed parking lighting meets the requirements of Section 59.6.4.4.

3. Division 6.3 Open Space and Recreation

Section 6.3.6.A General Requirements

The Zoning Ordinance requires ten percent (10%) Public Open Space for general building types in the CRT zone with a tract greater than 10,000 square feet. This Site Plan satisfies the Public Open Space requirement by providing 10 percent or 12,289 square feet of space devoted to public use and enjoyment, which meets the minimum square feet required. The 12,289 square feet of open space is provided north and south of the driveway access on Waters Road, as well as in the northern section of Wisteria Drive.

Section 6.3.6.B Design Requirements

The primary, most activated Public Open Space is at the corner of Waters Road and Wisteria Drive, to the north of Building B1. The space over 15 feet wide and is inviting with tables, benches, pedestrian pavers, and landscaping for shade and screening from the roads. The open space connects to 8-foot-wide walkways that wrap around Building B1, including an additional sitting area between the retail Buildings B1 and B2. There is also open space to the west and east of Building C with tables and benches. Stormwater management bioretention facilities and landscaping are interspersed throughout the open space areas. The open spaces along Wisteria Drive and Waters Road are accessible for pedestrians and cyclists who may be traveling along the proposed sidepaths on those roads. They may also be used by employees during their breaks or people who choose to park and walk around.

As described above, contiguous Public Open Space area is being provided on the Subject Property, which includes passive and active spaces. As proposed, the Public Open Spaces are safe, adequate, and efficient to meet the proposed development.

Section 6.3.8 Open Space Landscaping and Lighting

The Public Open space is adequately lit, has a minimum of ten percent (10%) permeable area, and features at least ten percent (10%) tree canopy cover after 20 years.

4. Division 6.4 General Landscaping and Outdoor lighting

Distributed throughout the Site, along the building facades, and in the parking lot, the proposed landscaping will enhance the visual appeal of the Subject Property and provide an aesthetically pleasing development. The location and quantity of the proposed landscaping is safe, adequate, and efficient on the Subject Property. The Site Plan is proposing landscaping to serve multiple purposes, including canopy cover in-and-around the parking facilities, landscaping around the Public Open Space, and landscaping adjacent to the proposed buildings. Planting includes canopy trees, understory trees, shrubs, perennials, ornamental grasses, and groundcover. Internal landscaping meets or exceeds zoning code requirements.

The lighting provided with this Application is safe, adequate, and efficient for ensuring good nighttime visibility within the parking lot and open space. The photometric plan submitted by the Applicant shows that the proposed lighting will adequately illuminate the site creating a safe environment, without creating light spillage or excessive glare on adjacent properties or the rights-of-way. As conditioned, all site lighting provides adequate, safe and efficient illumination.

The perimeter and parking lot of the site will be illuminated by thirty (30) foot pole lights. The interior of the site and the perimeter of the buildings will be illuminated by ten (10) foot wall-mounted lights along the building facades.

5. Division 6.5 Screening

The loading area and drop-off lane next to the Building A are screened with retaining walls and screening panels. The parking facilities are screened by the retail (Buildings B1 and B2) and restaurant (Building C) buildings along Waters Road. The parking facilities are screened from Waters House Avenue by landscaping. The parking facilities are screened from Wisteria Drive by the screening panels next to Building A and the proposed landscaping. The drive-thru lane is screened from Waters Road by the restaurant building.

e) Satisfies the applicable requirements of:

- i. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

The Site Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a Stormwater Management Concept/Site Development Stormwater Plan approval from MCDPS Water Resources Section dated February 10, 2023. The Application will meet stormwater management goals via micro-bioretention facilities and within planter boxes. Enhanced filters will be added where possible. An infiltration trench will be used for improvements within the Waters House Avenue right-of-way. The application of these approaches will provide for full environmental site design (ESD) to the maximum extent practicable (MEP).

ii. Chapter 22A, Forest Conservation.

The proposed Site Plan meets all requirements of the Forest Conservation Law.

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD” 420211290 for this Property was approved in March 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD included 3.52 acres, of which 98 percent of this land drains to the Little Seneca Creek watershed which is classified as Use Class III-P waters by the State of Maryland. Approximately 3,350 square feet (0.08 acres) in the eastern corner of the Property located near the intersection of Wisteria Drive and Water House Avenue is within the Middle Great Seneca Creek watershed, which is designated Use Class IV-P waters by the State of Maryland. The Subject Property does not contain any forest; however, there are four trees with a diameter at breast height (“DBH”) of 24 inches or more located on or immediately adjacent to the Subject Property, two of these trees have a DBH greater than 30 inches. The Property does not contain any streams, wetlands, floodplain, stream buffers, steep slopes, or highly erodible soils. There are no documented rare, threatened, or endangered species on the Property.

The Applicant submitted a Preliminary and Final Forest Conservation Plan (“FCP”) with the current development plan applications for Preliminary Plan No. 120220200 and Site Plan No. 820220260. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and comply with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned CRT-1.0 and is assigned a Land Use Category of Commercial and Industrial ("CIA") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 15% of the Net Tract Area.

The tract area for forest conservation purposes includes the 3.49-acre Property plus 0.70 acres of offsite disturbance associated with this Application, for a total net tract area of 4.19 acres. There is no existing forest within the net tract area which results in an afforestation requirement of 0.63 acres. The Applicant proposes to meet the planting requirement offsite by purchasing credits from an M-NCPPC approved forest bank. If there are no credits available for purchase, the Applicant will meet the requirements via fee-in-lieu payment.

Of the four trees identified with a DBH of 24 inches or more, three of these will be removed as part of this Application and were approved for removal as part of the Variance granted by the accompanying Preliminary Plan No. 120220200; two of which have a DBH greater than 30 inches (Tree #1 and #4). Tree #2, a 26" DBH Norway maple in fair condition will be removed due to necessary grading and construction of a required stormwater management feature. The fourth tree (Tree #3) is located offsite and will not be impacted by the proposed disturbance.

f) Provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;

The Site provides a safe, and efficient layout with parking, pedestrian connections, and open space that is well-integrated and logically located in relation to the proposed buildings. The parking is central to the site and screened from the surrounding roads. The side paths on Waters Road and Wisteria Drive provide access to the site. There are crosswalks for the entrances from Waters Road and Waters House Avenue. There are also three (3) crosswalks internal to the site. The drive-thru lane features a raised crosswalk with pavers and markings to clearly differentiate the pedestrian crossing.

g) Substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;

The Site Plan substantially conforms to the recommendations in the 2019 *MARC Rail Communities Plan*, the 2018 *Bicycle Master Plan*, and the 2021 *Complete Street Design Guide*. The development will be located north of Germantown Road (MD 118) in the GH designated area of the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* (see page 31 of the sector plan for the reference key). The GH designated area is a triangular site bounded by Waters Road on the west, Wisteria Drive on the east, and Germantown Road (MD 118) on the south. The proposed land use for the GH designated area is mixed-use. The Subject Property is within a five-minute walk of the Germantown MARC Station and across the street (Waters Road) from existing established residential development just outside of the 2019 *MARC Rail Communities Plan* boundary.

2019 Approved and Adopted MARC Rail Communities Sector Plan

The Vision for the Germantown portion of the 2019 *MARC Rail Communities Sector Plan* states “the Germantown plan area is envisioned as a compact, connected and walkable neighborhood with a mix of land uses. These uses include community- and commuter-serving retail, a range of housing options and parking structures for MARC commuters near the station. The historic integrity of the station area is maintained through the preservation and adaptive reuse of historic structures, while the design and placement of new buildings are sensitive to the historic scale and character. A variety of public spaces and dedicated open spaces accommodates community gatherings and enhance existing public events, such as the flea market that draws visitors to the area.

The recommendations in the Sector Plan for the Germantown area are geared toward supporting this vision and transforming the Germantown MARC Station area from an auto-dominated environment to an environment with an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders, and motorists. The six areawide

recommendations that are most applicable to the Waters Village site are as follows:

Strengthen and enhance historic areas and residential neighborhoods by allowing infill development that echoes the existing patterns of nearby historic resources and residential neighborhoods:

- Emphasize quality design of new development.
- Encourage compatible land uses for infill development.
- Build new structures with compatible architectural styles, scales and heights.
- Reflect historical development patterns, such as reduced front building setbacks.
- Encourage the adaptive reuse of underutilized historic structures in a manner that is sensitive and appropriate to the historic context.

The Plan provides further guidance with the detailed recommendations:

Connect Germantown Recommendation A.2.a. (page 53)

Transform the MARC station area from an auto-dominated environment to an interconnected street network that is safe and comfortable for pedestrians, bicyclists, transit riders and motorists (Sites GA, GF, GG, GH, GI, GJ, GK, GL and GM).

- Provide a network of local roads and pedestrian/bicycle facilities that will result in improved circulation and safe access, and create a fine-grained network of small, walkable blocks on the north side of the railroad tracks. Implement context-sensitive improvements to streets that calm traffic, improve safety and respect historic resources.

Waters Road was extended southward, within the past five years, to intersect with Germantown Road at a signalized intersection to provide pedestrians with safer crossing access to the Germantown MARC Station. In accordance

with the 2019 *MARC Rail Communities Sector Plan*, the Waters Village development is dedicating public right-of-way for a portion of the new street connection from Waterford Hills Boulevard to Wisteria Drive. The remaining portion of the new street will be provided when the property to the south of the Waters Village site is redeveloped.

Connect Germantown Recommendation A.2.c. (page 54)

Design complete streets that are safe and comfortable for all users.

- Plant tall-growing shade trees between pedestrian and bicycle facilities and the roadway to buffer pedestrians and bicyclists from vehicles and provide traffic calming.
- Design roadways with narrow lane widths within the Urban Road Code Areas.
- Design stormwater management facilities to safely accommodate on-street parking and pedestrians using the sidewalks.
- Ensure pedestrian safety and comfort on all area streets by limiting crossing distances to 60 feet or less (curb-to-curb or between the curb and a minimum six-foot wide refuge).

Waters House Avenue Connect Germantown Recommendation A.2.k. (page 64)

Connect Waterford Hills Boulevard to future Century Boulevard Extended via Waters House Avenue, classify Waters House Avenue as a two-lane business district street with parking on both sides to serve adjacent development.

The Application conforms with this recommendation. The three edges of the site, Wisteria Drive, Waters Road, and the portion of Waters House Avenue within the Subject Property, will have wide, shaded sidewalks. Street trees will be planted in a landscaped street buffer contiguous to the roadway so that the landscaped street buffer on each street of the site serves as a safe buffer between pedestrians and vehicles while also providing shade on the sidewalk. Along the Waters House Avenue frontage, additional trees and

other landscaping will be provided to screen the surface parking lot area from the adjacent right-of-way.

Waters Road Connect Germantown Recommendation A.2.l. (page 65)

Instead of a five-foot sidewalk on Waters Road as noted in the 2019 *MARC Rail Communities Plan*, the Applicant will be providing a wider 10-foot-wide shared-use path with on-street parking and a 7-foot street buffer that will promote and better serve pedestrian connectivity and safety. To accommodate these frontage changes, the current 70-foot right-of-way for Waters Road will slightly increase to 72.5 feet, necessitating a change in overall right-of-way dedication.

Renew Germantown Recommendation B1.a. (page 69)

Promote compatible infill development around the Boyds and Germantown MARC Stations, while protecting existing residential uses, historically significant structures and natural areas.

Renew Germantown Recommendation B.1.e. (page 78)

Create an attractive public realm that enhances the character of the Germantown MARC area.

- Carefully design infill development to reflect the character of the historic areas and promote a fine-scaled, walkable environment.
- Frame streetscapes and public spaces with buildings.
- Locate new buildings to define the street edges and create active street fronts.
- Orient the primary building facades and entrances to face public streets and improve pedestrian accessibility.
- Incorporate the setbacks, scale and architectural elements of historic buildings into any new infill or redevelopment in the existing residential area.
- Provide height transitions from existing buildings to new development.

The Subject Property will be compatible with the existing adjacent residential neighborhood. The proposed development has its buildings facing the two public right-of-ways closest to the Liberty Mills residential development with the parking behind and to the sides of the buildings. The building heights of the development will be up to 25 feet in height which is less than the buildings across Waters Road.

The largest building, Building A, will be located along the Wisteria Drive frontage of the block. As a long linear building, the façade will be broken into bays using ribbed cementitious panels as pilaster strips. Between the pilaster strips, materials such as fiber cement panels, EIFS and clear and spandrel glass are used to create a rhythm to the facades and break down the massing of the building. Although the primary entrance to the building will be from the surface parking lot, the Wisteria Drive façade of the building will be active with windows, as well as an artistic treatment or mural to engage the surrounding public space.

The three smaller retail pad sites, which are between 3,200 and 4,100 square feet, will be located along the Waters Road frontage of the building across from the multifamily buildings of the Liberty Mill complex. Pedestrian pass-throughs will be provided between building to allow for connectivity between the shared use path on Waters Road and the surface parking lot in the middle of the block. These pedestrian pass-throughs will also have areas for café seating for the retail spaces. The three retail buildings will have similar architecture to Building A. The two smaller retail buildings along Waters Road will have windows, multiple entrances, and public seating areas that will engage users.

- h) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;**

As discussed in the Preliminary Plan No. 120220200 resolution, the proposed development will be served by adequate public facilities, including police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. The Lot will be served public water and sewer. The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Property has adequate access for fire and rescue vehicles as shown on the approved Fire Department Access Plan dated March 16, 2023. There are existing 10-foot-wide public utility easements along the west side of the Waters House Avenue frontage. New utility easements will be provided on the frontage of Waters Road, Wisteria Drive and the continuation of Waters House Avenue, which will be sufficient to accommodate future utility installation. Storm drain easements will be provided to connect the existing and proposed infrastructure on-site.

Electric and telecommunications services are available and adequate to serve the Subject Property. Transportation facilities will be improved as part of the proposed development.

- 3. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

The Subject Property is not located in a Rural Residential or Residential zone.

- 4. on a property in all other zones, is compatible with existing, approved or pending adjacent development.*

The proposed commercial use is compatible with the existing abutting and confronting commercial uses. The retail buildings and drive-thru restaurant are similar in massing, height, and scale to the nearby retail establishments. Additionally, there are multifamily buildings across Waters Road. Residents will have the opportunity to walk to the proposed site and enjoy the services and open space areas.

- 5. To approve a Site Plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.*

The Applicant submitted a Statement of Need dated November 18, 2022. There are five existing drive-thru restaurants within half a mile (0.5-mile) of the Subject Property. The growing local population and rising number of multifamily dwelling units, including the nearby Fairchild Apartments, will increase the demand for restaurant options, including drive-thru restaurants. The Planning Board finds that a need exists due to an insufficient number of similar uses to serve the existing population concentrations in the county, and this drive-thru at this location will not result in a multiplicity or saturation of uses in the same neighborhood.

- 6. *For a property zoned C-1 or C-2 on October 29, 2014 that has not been rezoned by Sectional Map Amendment or Local Map Amendment after October 30, 2014, if the proposed development includes less gross floor area for Retail/Service Establishment uses than the existing development, the Planning Board must consider if the decrease in gross floor area will have an adverse impact on the surrounding area.***

Not applicable, the Subject Property is not zoned C-1 or C-2.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; 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 MAY 26, 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 motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick, and Pedoeem, voting in favor of the motion, at its regular meeting held on Thursday, May 18, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board