

Montgomery Planning

COLLEGE VIEW CAMPUS

PRELIMINARY PLAN AMENDMENT NO. 12020017A



Request to reinstate Preliminary Plan No. 120200170, which was approved for three (3) lots for up to 142 multi-family residential units, including 25% MPDUs, and up to 47,887 square feet of commercial use, and extend the Adequate Public Facilities (APF) validity period by five (5) additional years.

COMPLETED: 2/27/2026

PLANNING BOARD HEARING DATE: 3/12/2026

MCPB ITEM NO. 8

Montgomery County Planning Board
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LOCATION/ADDRESS

East side of Frederick Road (MD 355), approx.
500 feet north of Cider Press Place

MASTER PLAN

2009 *Germantown Employment Area Sector Plan*

ZONE

CRT-0.75, C-0.25, R-0.50, H-40, and R-60/TDR-12
Zones

PROPERTY SIZE

4.98 acres

APPLICANT

BRL Holdings, LLC

ACCEPTANCE DATE

March 12, 2025

REVIEW BASIS

Chapters 50 and 59

Summary:

- Staff recommends **approval with conditions** of Preliminary Plan Amendment No. 12020017A.
- The Planning Board approved Preliminary Plan No. 120200170 (College View Campus) to create three (3) lots for up to 142 multi-family units, including 25% MPDUs, and up to 47,887 square feet of commercial use by Resolution No. 20-107, dated November 4, 2020.
- The Preliminary Plan was not validated because the three (3) lots were not platted prior to the plan's validity expiration on December 4, 2023. The original APF validity period approved with the subdivision will expire on November 4, 2027.
- The Applicant requests that Preliminary Plan No. 120200170 be reinstated and extended with a validity period of one (1) year, per Section 50-4.2.H.2.b.
- The Applicant requests a five (5) year extension of the existing APF validity period, per Section 4.3 of Chapter 50, and a waiver of Subdivision Section 50-4.3.J.7.d to waive specific findings required to extend the existing APF validity period.
- The Amendment will not result in any changes to the original design or layout of the Preliminary Plan approval.
- No community correspondence has been received to date.

TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS	3
PRELIMINARY PLAN 12020017A.....	3
SECTION 2: SITE LOCATION AND DESCRIPTION	4
SITE LOCATION AND VICINITY.....	4
SITE ANALYSIS.....	5
SECTION 3: PROJECT DESCRIPTION.....	7
PREVIOUS APPROVALS.....	7
PROPOSAL	8
SECTION 4: COMMUNITY OUTREACH	9
SECTION 5: PRELIMINARY PLAN 12020017A FINDINGS AND ANALYSIS.....	9
SECTION 6: CONCLUSION	20
ATTACHMENTS	20

SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 12020017A

Staff recommends approval with conditions of the Preliminary Plan Amendment to reinstate Preliminary Plan No. 120200170, which was approved for three (3) lots for up to 142 multi-family units, including 25% MPDUs, and up to 47,887 square feet of commercial use, and extend the Adequate Public Facilities validity period. All site development elements shown on the latest electronic version of Preliminary Plan Amendment No. 12020017A, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. The following Condition No. 2 modifies the previously approved condition and Condition No. 26 is a new condition in addition to all others, which remain in full force and effect:

Modified Conditions

ADEQUATE PUBLIC FACILITIES AND OUTSIDE AGENCIES

2. The Adequate Public Facility (“APF”) review for the Preliminary Plan Amendment will remain valid for five (5) years from the current expiration date until November 4, 2032 ~~eighty-four (84) months from the date of mailing of this Planning Board Resolution~~, according to the following development schedule as shown on the Certified Preliminary Plan:

Phase I – Within 60 months or by November 4, 2030
Obtain building permits for Construct up to 50 45 multi-family units (either Building A or B).

Phase II – Within 72 months or by November 4, 2031
Obtain building permits for Construct up to an additional 92 97 multi-family units for a cumulative total of up to 142 multi-family units (Building A or B).

Phase III – Within 84 months or by November 4, 2032
Obtain building permits for Construct up to 47,887 square feet of commercial uses (Building C).

New Conditions

PLAN VALIDITY PERIOD

3. The Preliminary Plan will remain valid for one (1) year from the initiation date of Preliminary Plan Amendment No. 12020017A (as defined in Montgomery County Code Section 50.4.2.G). 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.

SECTION 2: SITE LOCATION AND DESCRIPTION

SITE LOCATION AND VICINITY

The Subject Property is located on the west side of Frederick Road (MD 355), 0.3 miles south of Germantown Road (MD 118), approximately 500 feet north of Cider Press Place, consisting of 4.98 acres of land comprised of three unrecorded parcels (“Property” or “Subject Property”). The properties are split zoned, CRT-0.75, C-0.25, R-0.50, H-40 and R-60/TDR 12. (Figure 1).

The Subject Property is within the Montgomery College District of the 2009 *Germantown Employment Area Sector Plan* (“Sector Plan”). Immediately to the west of the Subject Property is the Montgomery College Germantown Campus, which is in the Life Sciences Center (LSC) zone. There are existing townhouse developments directly north and south of the Subject Property, both of which are zoned R-60/TDR-12.



Figure 1 - Vicinity Map



Figure 2 – Zoning Map

SITE ANALYSIS

The 4.98-acre Subject Property consists of part of a lot (Lot 79 on Record Plat 276) and three Parcels (P809 and P811 on Tax Map FU13, P888 on Tax Map EU63). The westernmost portion of the Property, part of P888, is zoned R-60/TDR-12, and the remainder of the Property is zoned CRT-0.75, C-0.75, R-0.50, H-40 (Figure 2). The Subject Property has frontage on Frederick Road (MD 335) and Cider Barrel Drive (Figure 3). It is situated to the north and south by existing townhouse developments, zoned R-60/TDR-12. Both developments created a road network to serve their developments from MD 355 and MD 118. Cider Barrel Drive terminates directly north and south of the Property, implying a future connection through the Subject Property.

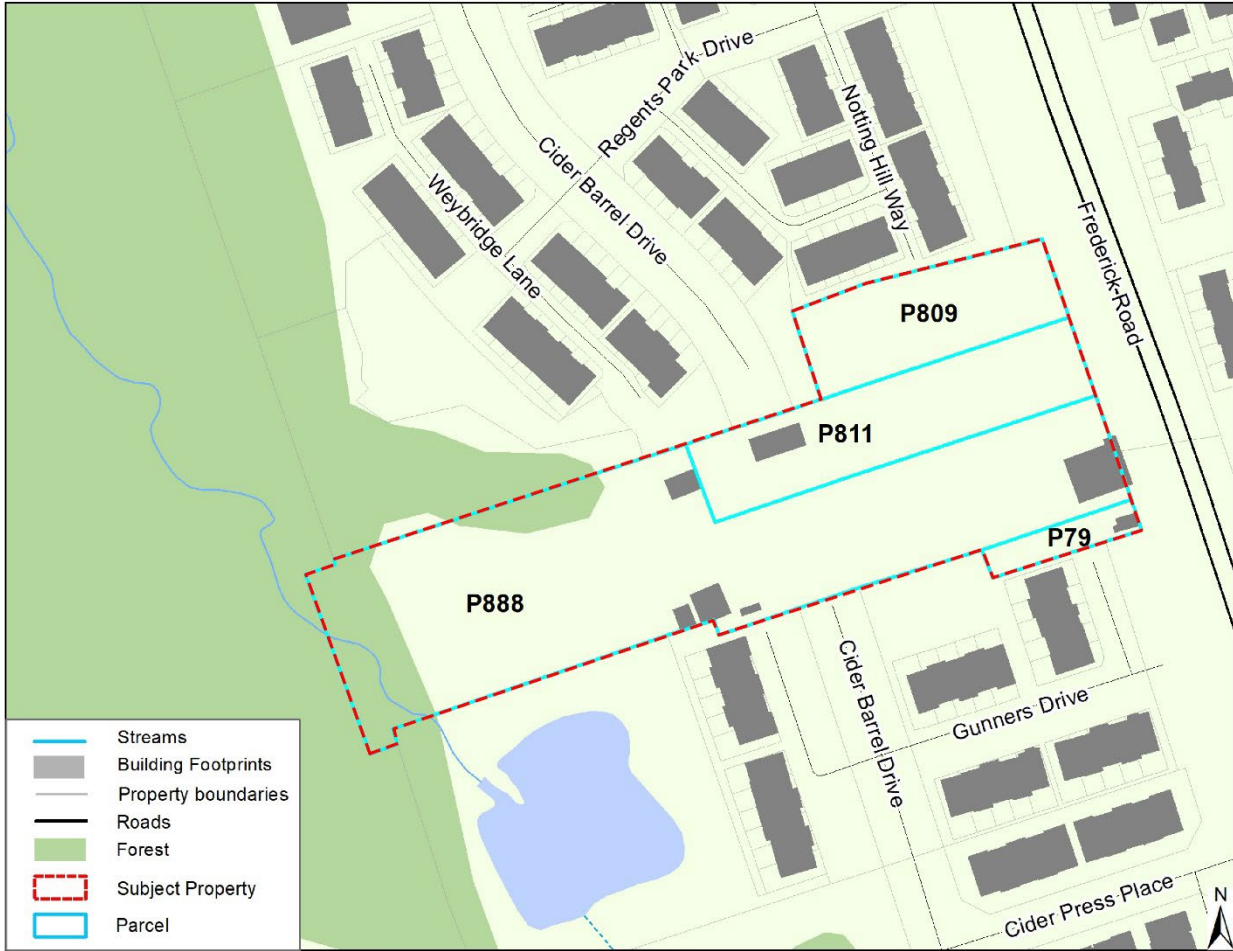


Figure 3 – Property Boundary Map

The Property is located within the Middle Great Seneca Creek watershed, which is classified by the State of Maryland as Use Class IV-P waters. There are approximately 0.79 acres of forest on the Property as well as numerous large trees, including specimen trees in and along the western perimeter of the Property. A tributary stream, part of Gunners Branch, flows in a northerly direction through the western portion of the Property. Prior to flowing onto the Subject Property, the stream is temporarily interrupted by an existing stormwater management pond abutting the southern property line, which currently serves the adjacent townhouse development. There is an associated 100-year floodplain, wetlands, and an environmental buffer on the Property. The remainder of the Property consists of abandoned buildings, paving materials, and assorted debris.



Figure 4 – Aerial Map

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

Preliminary Plan No. 120200170

On November 4, 2020, the Planning Board approved Preliminary Plan No. 120200170 (MCPB No. 20-107) to create three (3) lots on 4.98 acres of land in the CRT-0.75, C-0.25, R-0.50, H-40, and R-60/TDR-12 zoned land (Attachment C).

Site Plan No. 820200140

On November 4, 2020, the Planning Board approved Site Plan No. 820200140 (MCPB No. 20-108) for two residential buildings with up to 142 multi-family units, including 25% MPDUs, and one

commercial building with up to 47,887 square feet of commercial uses on 4.98 acres of land in the CRT-0.75, C-0.25, R-0.50, H-40 and R-60/TDR-12 zoned land.

PROPOSAL

Preliminary Plan Amendment No. 12020017A, which was accepted on March 12, 2025 (“Application” or “Amendment”), requests reinstatement of the Preliminary Plan approval and an extension to the existing Adequate Public Facilities (APF) validity period. The Amendment would establish a new Preliminary Plan validity period and an extended APF validity period. The Preliminary Plan reinstatement and extension to the APF validity period would afford the Applicant the necessary time to obtain Record Plats for the three lots and complete the required public infrastructure and improvements (Figure 5). The request for the Preliminary Plan reinstatement is in accordance with Section 50.4.2.H.2.b. of the Montgomery County Code, which permits the Planning Board to reinstate a Preliminary Plan if the Applicant demonstrates practical difficulty or undue hardship. The extension of the existing APF validity period is in accordance with Section 50.4.3.J.7 of the Montgomery County Code, which permits the Board to extend the validity period for a determination of adequate public facilities.

The Application also seeks approval of a waiver to provide relief from specific findings required to extend the APF validity. As discussed in this Staff Report, the Applicant’s requests are justified, and Staff recommends the Planning Board approve the reinstatement, extension, and associated waiver. No additional modification or physical changes are proposed. As evident in the Applicant’s Statement of Justification (Attachment B) and detailed in the findings below, the Applicant will suffer a practical difficulty by being unable to complete the two remaining steps in the Plat process and is at risk of losing significant time, effort, and resources that have been invested in the post-approval financing and civil permitting work to date. While the record plat process was initiated approximately three months after the Planning Board approval, challenges posed by the Pandemic (COVID-19) and conflicts created by the former development manager prevented its completion. Additional undue hardship would result if the Preliminary Plan was not reinstated with an extended APF validity period. As discussed in Section 5 below, the Amendment does not alter the intent of the original Preliminary Plan approval.



Figure 5 – Rendered Plan

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all application submittal, noticing, and sign posting requirements under COMCOR 50.10.01.04 of the Subdivision Regulations. The required hearing notice sign was adequately posted at the Subject Property. Written notice of the Application was mailed by the Applicant to all required parties.

A pre-submission meeting was not required as this Application is a minor amendment to Preliminary Plan No. 120200170. As of the published date of this Staff Report, no community correspondence has been received.

SECTION 5: PRELIMINARY PLAN 12020017A FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 120200170, MCPB No. 20-107, to create three (3) lots for up to 142 multi-family units, including 25% MPDUs, and up to 47,887 square feet of commercial use on the Subject Property with conditions (Figure 6). The Preliminary Plan was valid

until December 4, 2023, by which time plats needed to be recorded for the three (3) lots in the Preliminary Plan; however, the plats were never recorded.

Preliminary Plan Amendment No. 12020017A requests to reinstate Preliminary Plan No. 120200170 and extend the existing Adequate Public Facilities validity period. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable, except as modified below.

PRELIMINARY PLAN REINSTATEMENT

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

2. Effect of failure to submit a timely extension request.

- a. *The failure to submit a written extension request in a timely fashion voids all non-validated portions of the preliminary plan and, where applicable, an approved site plan.*
- b. *Where a preliminary plan has been allowed to expire due to the applicant's failure to file a timely request for extension, the Board may reinstate the preliminary plan and establish a new validity period if practical difficulty or undue hardship is demonstrated by the applicant. The Board may require the applicant to get a new APF review and approval by the Board as a prerequisite or condition of its action to extend an expired plan.*

For this Amendment, the reinstatement of the Preliminary Plan establishes a new one (1) year Preliminary Plan validity period and extends the existing APF validity period for five (5) years. The reinstatement will allow the Applicant to plat the three lots for the construction of two multi-family residential buildings and one commercial building, and to complete the required public infrastructure and improvements.

As detailed in Table 1 below, the Preliminary Plan was originally approved on November 4, 2020, with a 3-year validity period starting on the 30-day initiation date of December 4, 2020, and expiring on December 4, 2023. The Preliminary Plan does not qualify for any extensions from County Council legislative actions because it was approved on November 4, 2020, approximately three months after the July 28, 2020, cutoff date for SRA No. 20-01.

Table 1: Approved Staged Development Validity Period

Action	Approved Development	Validity Duration	Validity Expiration
Original Preliminary Plan Approval (MCPB Resolution No. 20-107)	120200170	3 years	12/4/2023

3. Grounds for extension.

- a. *The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:*
 - i. *delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or*
 - ii. *the occurrence of significant, unusual and unanticipated events, beyond the applicant’s control and not caused by the applicant, have substantially impaired the applicant’s ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.*
- b. *The applicant bears the burden of establishing the grounds in support of the requested extension.*

As detailed in the Statement of Justification for the reinstatement, the Applicant will suffer practical difficulty and undue hardship by being unable to complete the final two steps required for platting the three lots. Originally, the Applicant filed the plat for the lots on January 20, 2021, three months after the original Preliminary Plan approval. While the plat has been actively under review, the project has experienced challenges and delays attributed to the Pandemic, as well as unfortunate conflicts created by the original development manager. These conflicts impacted the project’s entitlement process and involved the applicant team, the community, and the Planning Department. This led to significant delays in addressing agency comments for the plat and delays with the civil permitting process. Ultimately, a new development manager was obtained for the project. The Grade Establishment Plan for the plat was approved on March 13, 2024, and the plat review by the Montgomery County Department of Permitting Services (“MCDPS”) was completed on June 5, 2024. The plat was then signed by the applicant and current mortgagor; however, it was deemed ineligible for the Planning Board agenda because the original Preliminary Plan validity period had lapsed.

In addition to the Grade Establishment Plan, the Applicant has filed for a sediment control permit with MCDPS, received approval from the Montgomery County Department of

Transportation for a signage and pavement marking plan and temporary traffic control plan, and approval from the Washington Suburban Sanitary Commission (“WSSC”) for a hydraulic planning analysis. Currently, the Applicant is working towards approval of a right-of-way permit from MCDPS, an access permit from the Maryland State Highway Administration, WSSC system extension plan approval, and a Maryland Department of the Environment Notice of Intent to Discharge (“NOI”) permit.

The permits and approvals will remain pending until the Preliminary Plan can be validated, and the plats recorded. In addition, the public infrastructure and improvements were not constructed for the three lots. By not reinstating the Preliminary Plan, the Applicant would incur practical difficulties and hardships by losing the time, effort, and resources invested in the civil permitting work and post-approval financing to date. The Applicant’s request for reinstatement would allow them to move forward with platting the three lots and completing the public infrastructure and improvements per the original Preliminary Plan approval.

4. Planning Board considerations for extension.

- a. *The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.*
- b. *The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project’s viability upon request by the Board or the Director.*

The Amendment proposes to reinstate original Preliminary Plan No. 120200170 with a validity period of one year. The one-year period provides sufficient time for the Applicant to complete the platting process by recording the three the lots, thus validating the Preliminary Plan. Following completion of the platting process, the Applicant will be able to proceed with construction of two multi-family residential buildings, one commercial building, and the completion of the required public infrastructure and improvements.

5. Planning Board Action.

- a. *After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.*
- b. *If voting to approve an extension, the Board must only grant the minimum time it deems necessary for the applicant to validate the plan.*

- c. *The Board may only grant an extension to a preliminary plan within the plan’s APF validity period, unless a further extension is allowed by law.*
- d. *An applicant may request, and the Board may approve, more than one extension.*
- e. *Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of the validity period.*

The Amendment proposes to reinstate original Preliminary Plan No. 120200170 with a validity period of one year. The one-year period provides sufficient time for the Applicant to complete the platting process by recording the three the lots, thus validating the Preliminary Plan. Following completion of the platting process, the Applicant will be able to proceed with construction of two multi-family residential buildings, one commercial building, and the completion of the required public infrastructure and improvements.

Staff recommends approval of the request. The Application to reinstate the Preliminary Plan does not alter the intent of the original approval, and the only changes to conditions of approval are those necessary to complete the record plat process and extend the APF validity period, as detailed below.

ADEQUATE PUBLIC FACILITIES (APF) VALIDITY EXTENSION

Section 50.4.3.J.7 of the Montgomery County Code authorizes the Board to extend the validity period for a determination of APF, subject to the following findings:

7. Extensions.

- a. **Application.** *Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
 - i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.*

The Applicant filed the request to extend the current APF validity period on March 12, 2025, before the November 4, 2027 expiration date.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

Per this amendment, the development of the three-lot mixed-use subdivision will remain a multi-phase project, utilizing the phasing plan as originally approved in Preliminary Plan No. 120200170 (Table 2). The Amendment will be subject to the proposed APF validity period. All buildings must be constructed prior to the expiration of the APF validity period.

Table 2: Preliminary Plan Validity Period and Adequate Public Facilities Phasing

Phase	Benchmark See Conditions of Approval for Triggers	Approved		Proposed	
		PP Validity Period	APF Validity Period	PP Validity Period	APF Validity Period
I	Obtain building permits for 45 multi-family units (Building A or B) <ul style="list-style-type: none"> Construct the extension of Cider Barrel Drive and Public Street A to approved public street standards. Construct a natural surface trail as approved by M-NCPPC Staff, Montgomery College, and the MCDEP Construct a 16-ft-wide asphalt shared use path with a minimum 6-ft-wide buffer from the edge of pavement along the full frontage of MD 355. 	36 Months (3 Years) from Initiation Date ¹ 12/4/2020 – 12/4/2023	60 Months (5 Years) from Date of Mailing ² 11/4/2020 – 11/4/2025	12 Months (1 year) from Planning Board Resolution	60 Months (5 Years) from Expiration ³ 11/4/2025 – 11/4/2030
II	Obtain building permits for 97 additional multi-family units for a total of 142 units (Building A or B) <ul style="list-style-type: none"> Install a traffic signal at the intersection of Oxbridge Drive and MD 355. Improve the southern leg of the Cider Barrel Drive and MD 118 intersection to a right-in, right-out condition. Conduct signal optimization to reduce the average delay at the intersections of Middlebrook Road/MD 355 and MD 118/MD 355 as approved by staff from MCDOT and SHA. 		12 months (cumulative 72 months or 6 years) 11/4/2020 – 11/4/2026		60 Months (5 Years) from Expiration 11/4/2026 – 11/4/2031
III	Obtain building permits for 47,887 square feet of nonresidential uses (Building C)		12 months (cumulative 84 months or 7 years) 11/4/2020 – 11/4/2027		60 Months (5 Years) from Expiration 11/4/2027 – 11/4/2032

¹ Initiation Date = 30 days + mailing date of November 4, 2020 (December 4, 2020)

² Date of Mailing requirement is imposed by Preliminary Plan Condition 2 (November 4, 2020)

³ Expiration date is when the extended APF Validity Period lapses.

iii. *For each extension of an adequate public facilities determination:*

(a) *the applicant must not propose any additional development above the amount approved in the original determination;*

No additional development is proposed.

(b) *the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional public improvements or conditions are required.

(c) *the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;*

A traffic study was completed in August 2019 as part of the original Preliminary Plan No. 120200170. This study stated that the proposed development generated 104 new trips during the AM peak hour and 106 net new trips during the PM peak hour. No additional development is proposed; therefore, the traffic generated by this project has already been studied and approved. All previous conditions of approval related to transportation improvements will remain in effect; therefore no new study is needed.

(d) *an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and*

Not applicable because the lots are not recorded and are thus not part of a subdivision covered by a previous APF determination.

(e) *if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.*

Overview and Applicable School Test

The FY2026 Annual School Test, approved by the Planning Board on June 26, 2025, and effective since July 1, 2025, is applicable to this application.

School Adequacy Test

The Application is served by Fox Chapel Elementary School (“ES”), Rocky Hill Middle School (“MS”), and Clarksburg High School (“HS”). Based on the FY2026 Annual

School Test, the student enrollment and capacity projections for these schools are noted in the following table:

Table 3 - FY2026 Annual School Test Projections (2029-2030 School Year) & UPP Tier Placements

School	Program Capacity	Enrollment	Utilization Rate	Seat Surplus or Deficit	UPP Tier Placement
Fox Chapel ES	665	635	95.5%	+30	No UPP
Rocky Hill MS	1,020	1,043	102.3%	-23	No UPP
Clarksburg HS ⁴	2,020	1,881	93.1%	+139	No UPP

Based on the FY2026 Annual School Test results above, the Application is not subject to any UPP by default. However, if the Application’s enrollment impact estimate exceeds an adequacy ceiling shown below in Table 4, a payment will be required.

Table 4 - FY2026 Annual School Test Adequacy Ceilings

School	Tier 1 Adequacy Ceiling	Tier 2 Adequacy Ceiling	Tier 3 Adequacy Ceiling
Fox Chapel ES	104	163	263
Rocky Hill MS	97	181	334
Clarksburg HS	299	543	846

Based on the School Impact Area classification and net residential units proposed, this project’s enrollment impact during an average year throughout its life is estimated to be 17 elementary school students, 9 middle school students, and 11 high school students, as shown below in Table 5.

Table 5 - Student Enrollment Impact Estimate (reflects FY2026-2027 Student Generation Rates)

Type of Unit	Net Number of Units	Turnover ES Student Generation Rate	ES Student Estimate	Turnover MS Student Generation Rate	MS Student Estimate	Turnover HS Student Generation Rate	HS Student Estimate
MF Low-rise	142	x 0.123	= 17.466	x 0.064	= 9.088	x 0.083	= 11.786
TOTAL (rounded down)			17		9		11

⁴ Projected enrollment is modified to estimate the impact of Crown HS (CIP P651909), reflecting the scope of the boundary study approved by the Board of Education on March 19, 2024. Due to the delay of the Damascus HS Major Capital Project (CIP P652102), some of the boundary changes can be implemented in phases.

The enrollment impact estimate does not exceed the adequacy ceilings identified in Table 4. Therefore, a Utilization Premium Payment is not triggered.

Section 50.4.3.J.7.d of the Subdivision Regulations sets forth the specific criteria below that must be satisfied for approval of the extension of the APF determination for a nonresidential or mixed-use subdivision development, as follows:

d. Nonresidential or mixed-use subdivisions.

i. The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:

(a) the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;

(b) all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and

(c) the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:

(1) structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or

(2) structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor

.....

iii. The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:

(a) 2.5 years for a subdivision with an original validity period of 7 years or less; or

(b) 6 years for a subdivision with an original validity period longer than 7 years.

The Preliminary Plan has not been validated; therefore, the Applicant has not obtained a building permit or commenced construction. Additionally, the Preliminary Plan has 2 years of APF validity remaining because it was originally approved with a phased APF validity period of 7 years. The Applicant is seeking a 5-year extension to the APF validity period to meet the original phased development schedule. Therefore, the Applicant is requesting a waiver from the findings delineated under both 50.4.3.J.7.d.i and 50.4.3.J.7.d.iii.

SUBDIVISION WAIVER – SECTION 50.9.1

Section 50.9.1 of the Subdivision Regulations authorizes the Board to modify or waive any portion of the Subdivision Regulations. In granting a waiver, the Planning Board must make certain findings, set forth in Section 50.9.3.A.

Per Section 50.9.3., to grant a waiver, the Planning Board must find that:

- 1. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;***

As discussed above, since Preliminary Plan No. 120200170 was approved, practical difficulties for the Applicant have arisen. To date, the three lots have not been platted, and consequently, the multi-family dwelling units and commercial uses were never constructed. Additionally, the public infrastructure and improvements were not constructed as per the original Preliminary Plan approval. The practical difficulties imposed on the project with the departure of the former development manager, in addition to the impacts from the pandemic, have prevented the Applicant from validating the Preliminary Plan. The Applicant has been unable to satisfy the requirements of 50.4.3.J.7.d.i because the Preliminary Plan must be validated and plats recorded before pulling building permits, occupancy permits and constructing infrastructure. Additionally, the Applicant is unable to satisfy the requirements of 50.4.3.J.7.d.iii because it creates a practical difficulty by having a 3-phased project limited to 2.5 years. The Applicant needs additional time to secure financing for the project and obtain building permits for the first phase. In this case, the application of these sections is not needed to ensure public health, safety, and general welfare. However, if this Application is approved and implemented, the required improvements associated with this Project will improve elements of public safety by increasing connectivity, upgrading existing pedestrian and bicycle connections, and adding to a more complete community with much needed housing within Germantown and for students at Montgomery College.

- 2. *the intent of the requirement is still met; and***

The intent of the APF review findings is to determine if the public facilities and services, including roads, other transportation facilities, water and sewer service, schools, police stations, firehouses and health clinics are adequate to support proposed development, according to the latest Growth and Infrastructure Policy. Similarly, the findings for extending APF are intended to determine if a new APF review is required and if the Applicant is progressing forward on a development or artificially inflating the development pipeline, which has impacts on other proposed developments. The Applicant is requesting a five-year extension of the APF, which is reasonable, considering the proposed Preliminary Plan reinstatement and the efforts made to bring this project to fruition. Furthermore, the

existing APF approval is valid until November 4, 2027, and no significant changes have occurred in the vicinity of the Subject Property that would necessitate a new APF review. The Applicant will need not only to have the Preliminary Plan reinstated, as discussed above, but also to have the current APF validity period extended so that the three lots can be platted, move forward with the project, and obtain building permits. The intent of the requirement will be met with the reinstatement of the Preliminary Plan and the extension of the APF validity period. The Applicant will fully comply with the Conditions of Approval by platting the three lots and completing the required public infrastructure and improvements as approved with the original Preliminary Plan No. 120200170 and Site Plan No. 820200140.

3. the waiver is:

- a. the minimum necessary to provide relief from the requirements; and**
- b. consistent with the purposes and objectives of the General Plan.**

As discussed, the Applicant cannot meet the criteria for extending an exclusively non-residential subdivision because the Preliminary Plan must be validated before meeting any of the thresholds identified in the criteria. As such, a waiver of Section 50-4.3.J.7.d is the minimum necessary to provide relief from the requirements. If approved, this Application, including the waiver, will provide a reasonable amount of time for the Applicant to plat the three lots and complete the public infrastructure and improvements as conditioned by the original Preliminary Plan. Once realized, this subdivision will provide needed housing within Montgomery County. The waiver is consistent with the objectives of the General Plan (*Thrive Montgomery 2050*) because the development will provide needed housing and improvements to connectivity for pedestrian, bicycle, and vehicular infrastructure. The Application will provide up to 142 multi-family units, including 25% MPDUs, which meets the General Plan's recommendation for increasing the overall housing supply to meet the needs of a growing population, as well as provide housing for students at neighboring Montgomery College. The Application will also provide improved connectivity for Cider Barrel Drive and Frederick Road, in addition to an off-site trail connection for pedestrians to Montgomery College. This meets the General Plan's recommendation for emphasizing multimodal transportation by providing connectivity for walking, biking, and transit to-and-from the new dwelling units.

SECTION 6: CONCLUSION

The Application, with the proposed modification to Condition 14 and addition of Condition No. 26, satisfies the criteria for granting reinstatement of the Preliminary for one (1) year, pursuant to Section 50-4.2.H.2.b. Further, the Application meets the requirements for an extension of the APF for five (5) years, pursuant to Section 50-4.3.J.7.d.

Therefore, Staff recommends approval of the Preliminary Plan reinstatement, the Waiver, and the APF extension. As proposed, the three approved lots continue to meet all requirements established in the applicable Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the 2009 *Germantown Employment Area Sector Plan*.

ATTACHMENTS

Attachment A: Statement of Justification

Attachment B: MCPB Resolution No. 20-107



Casey L. Cirner
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March 2, 2026

Artie Harris, Chair
and the Commissioners of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
2425 Reddie Drive, 14th Floor
Silver Spring, Maryland 20902

Re: Preliminary Plan Reinstatement, Extension of Adequate Public Facilities
Determination and Subdivision Waiver
College View Campus Preliminary Plan No. 12020017A (“Preliminary Plan”)
142 Multi-Family Dwelling Units, Minimum 25% MPDUs, up to 47,887 square
feet Nonresidential Uses

Dear Chair Harris and Commissioners of the Planning Board:

The applicant, BRL Holdings LLC (“Ben Lewis”), respectfully requests pursuant to §§ 50.4.2.H.2.b, 50.4.3.J and 50.9.1 of the Montgomery County Code (“Subdivision Regulations”): a) reinstatement of the Preliminary Plan for one (1) year (until March 12, 2027) to effectuate approval and recordation of Plat No. 2202210470 (the “Plat”); b) a five (5) year extension of the adequate public facilities (“APF”) determination for each of the Preliminary Plan’s three (3) phases of development (until November 4, 2030, November 4, 2031 and November 4, 2032, respectively); and c) a subdivision waiver to limit the findings required to grant the APF extension under the existing circumstances for five (5) years (collectively the “Reinstatement”).

The Preliminary Plan approved the development of 142 multi-family units, including a minimum of 25% MPDUs, and up to 47,887 square feet of nonresidential uses in three (3) buildings on three (3) lots (“Project”) located at 20220 Frederick Road in Germantown (“Property”), adjacent to Montgomery College. The Reinstatement is necessary to protect and preserve an attainable housing project that will provide multi-family units and laboratory space connected to Montgomery College by a natural surface trail, provide significant right-of-way dedication and public improvements to establish planned and proffered vehicular connections and critical pedestrian and transit connections, effectuate the approval and recordation of the Plat for the Project, which is ready for review by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the “Planning Board”), and allow time to secure construction financing and Project funding through Montgomery County and to obtain civil and building permits and construct the Project.

I. Background

For over fifty (50) years, Ben Lewis has been a successful commercial plumber in Montgomery County. He acquired the Property nearly forty (40) years ago for his business headquarters, which operated from the Property for thirty (30) years before moving north to Clarksburg. Since relocating his headquarters, Ben Lewis has leased the Property for charity depots to Haiti, Christmas tree sales and various landscaping offices and food vendors.

The Property consists of four (4) parcels (Part of Lot 79 and Parcels, 888, 811 & 809) totaling 216,948 square feet in size (4.78 acres) and is zoned CRT 0.75 and R60/TDR-12.¹ It has frontage on Frederick Road (Maryland Route 355) (“355”), is generally rectangular in shape and is part of the Montgomery College District of the 2009 Germantown Employment Sector Plan (“Sector Plan”). To the north of the Property is the Eton Square townhouse development and to the south is the Orchard Run townhouse development. Montgomery College adjoins the west/rear of the Property.

Ben Lewis envisions the Project to be affordable multi-family housing and a laboratory/research building that will complement its proximity and pedestrian connection to Montgomery College, providing options for student and faculty housing and additional incubator or curriculum programmed lab space, as depicted below:



Through a development manager working together with three (3) separate consulting firms (landscape architect, surveyor and engineers), Ben Lewis sought natural resource inventory/forest stand delineation plan (420200170), concept plan (520200060), Preliminary

¹ 34,786 square feet of the Property is zoned R-60/TDR.

Plan (120200170), site plan (820200140) (“Site Plan”), final forest conservation plan (120200170/820200140) and plat (220210470) review and approvals for the Project over the course of seven (7) years, spanning from August 2019 to date. However, Project challenges caused the dismissal of the development manager, which coupled with the pandemic and the inability to timely secure Project funding through Montgomery County, caused the unfortunate expiration of the Preliminary Plan, and potentially the Site Plan, prior to the Plat approval.² Should the Planning Board grant this application, the Plat is ready for the last two (2) remaining procedural steps, Planning Board review and recordation, the Site Plan will be revalidated and additional time will be provided for financing, civil permitting and construction.

II. The Project’s Public Improvements and Community Considerations Justify the Reinstatement.

The Preliminary Plan creates three (3) recorded lots at the Property for the development of (2) multi-family residential buildings approximately four (4) stories in height with ninety-seven (97) and forty-five (45) units, respectively, and one (1) three (3) story commercial building proposed for approximately 47,887 of laboratory space.³ The Preliminary Plan is approved for three (3) phases of development with a single three (3) year validity period, that expired November 4, 2024, and an adequate public facilities determination of sixty (60) (Phase I), seventy-two (72) (Phase II), and eighty-four (84) months (Phase III), set to respectively expire on November 4th in 2025, 2026 and 2027. See Validity Duration Table attached hereto and incorporated herein as **Exhibit A**.

Significant public improvements and community investment would be lost if the Preliminary Plan is not reinstated. The Preliminary Plan incorporates community feedback into the site design, building placement and right-of-way dedications and includes several important transportation links for both internal and external vehicular, pedestrian and bicycle connectivity in accordance with the Sector Plan. These public improvements are: a) the master planned connection of Cider Barrel Drive from the north stub through the Property to the southern stub for an alternative vehicular and pedestrian route parallel to Frederick Road (Maryland Route 355) (“355”); b) Applicant’s proffered public road connection internal to the Property from 355 to Cider Barrel Drive⁴; c) the consolidation of four (4) existing curb cuts along the Property’s 339 feet of frontage on 355 into a single curb cut;

² Consequently, the Preliminary Plan expiration may have also invalidated the Site Plan. §50.4.2.H.2.a, Subdivision Regulations.

³ A formal Concept Plan was initially processed by the Applicant and Development Review Committee comments were received and addressed. The Preliminary Plan was concurrently filed with the Site Plan on January 8, 2020 and both were approved at the October 8, 2020 Planning Board public hearing. Planning Board Resolutions MCPB No. 20-107 and 20-108 were mailed on November 4, 2020 and no appeal ensued. On August 10, 2021, the Applicant obtained Preliminary Plan and Site Plan certifications. On January 20, 2021, the Applicant filed the Plat, which is fully reviewed by agency staff and was signed by the Applicant and its lender in September 2023.

⁴ This vehicular link is not required by the Sector Plan, but the Applicant incorporated it into the Preliminary Plan in response to community feedback.

d) a natural surface trail connecting the 355 corridor to Montgomery College; e) the sixteen (16) foot Clarksburg to City of Gaithersburg Breezeway shared use path with six (6) foot buffer strip within the 355 right-of-way along the Property's frontage; f) six (6) foot wide sidewalks along the Property's 355 frontage and extending internally through the Property along both sides of the proposed public roads; g) five (5) foot wide internal sidewalks connecting all three (3) buildings in the Project; h) 20,973 square feet of public open space; i) a traffic signal at the Oxbridge Road/355 intersection to the north of the Property; j) the creation of a channelized right-in, right-out intersection at Germantown Road/Cider Barrel Drive to restrict through and left-turn movements; k) signal optimization to reduce the average delay at the intersections of Middlebrook Road/355 and Germantown Road/355; and l) the community's requested reconstruction of an off-site segment of Cider Barrel Drive to the north to stripe six (6) new parking spaces for enhanced residents parking.



In addition, the Plat will dedicate approximately 1.11 acres (48,445 square feet) of the Property for County (32,997 square feet) and State (15,448 square feet) right of way. It will also protect an existing stand of high priority forest at the Property and the Gunners

Branch stream buffer through a 30,000 square foot Category I Forest Conservation Easement proposed at the rear of the Property for simultaneous visual screening.

Preliminary Plan reinstatement will safeguard the significant efforts of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission (“Planning Department”), the community and Ben Lewis invested in the Project. The Preliminary Plan and Site Plan approvals result from a rigorous review to ensure a context sensitive design adjacent to the existing townhouse neighborhoods to the north and south. Using strategic building placements that take advantage of the site’s sloping topography, the Project building heights, massing and scale are minimized.⁵ Significant setbacks of 65-90 feet between the proposed and surrounding developments and the proposed variable width building restriction line along 355 create compatibility among land uses and synergize the 355 corridor.⁶ Given the status of the Plat, recreating these efforts is unnecessary in light of the option to reinstate the Preliminary Plan.

III. The Preliminary Plan Reinstatement is Justified.

Section 50.4.2.H.2.b of the Subdivision Regulations authorizes the Planning Board to reinstate a preliminary plan and establish a new validity period. The specific decision standard that must be satisfied for reinstatement of the Preliminary Plan is “if practical difficulty or undue hardship is demonstrated by the applicant.” § 50.4.2.H.2.b, Subdivision Regulations. The following statements demonstrate how the proposed request satisfies these requirements:

Ben Lewis will suffer practical difficulty and undue hardship if unable to reinstate the Preliminary Plan to complete the two (2) steps remaining in the Plat process to vest the Preliminary Plan. Ben Lewis intended to vest the Preliminary Plan, having filed the Plat on January 20, 2021, three (3) months after Preliminary Plan approval. The Plat has been under review since that date subject to delays from the Project challenges. In addition to the challenges posed by the pandemic, the development manager created unnecessary conflicts throughout the Project’s entitlement process with all participants (community, Planning Department and development team) that resulted in a waterfall effect of challenges that created delays in moving the Project forward, delays in addressing agency Plat comments, delays with civil permitting and confusion amongst the development team, all of which ultimately led to the dismissal of the development manager for the sole purpose of completing the Project. Once resolved, the Grade Establishment Plan was approved for the Plat on March 13, 2024 and the Department of Permitting Services (“DPS”) and Planning Department completed their Plat review on June 5, 2024. Circumstances, however, dealt another hurdle because the Plat, although having met these milestones and

⁵ The overall site has a consistent downhill gradient from 355 to the rear Property line and from its north. The topography to the north jumps ten (10) feet. The nearest adjacent townhouse units to the north and south are about 20 feet taller without vertical strictures.

⁶ The nearest townhouse to the north, 11900 Weybridge Lane, is a massive 90-feet away from the proposed development. The nearest townhouse to the east, 20300 Cider Barrell Drive, is over 60-feet from the proposed development.

being signed by the Applicant and its current mortgagor, could not be put on the Planning Board’s agenda because the Preliminary Plan had expired, triggering the filing of this Application on November 18, 2024. The expiration of the Preliminary Plan requires Ben Lewis to restart the entire entitlement process for the Project all over again from the very beginning – preparation, filing and approval of a new NRI/FSD. Duplicating the time, input, effort, and resources to re-commence that journey by Ben Lewis and all those involved, as opposed to undertaking the final steps of the Plat process, is a significant practical difficulty and undue hardship.

It will be a practical difficulty if the Plat is not recorded because the Property is already encumbered by the Forest Conservation Easement. In anticipation of Plat approval, Ben Lewis recorded the Category I Forest Conservation among the Land Records on October 6, 2021. See **Exhibit B**, attached hereto and incorporated herein. For approximately four (4) years, 30,000 square feet of the Property have been in conservation in anticipation of the development. Although this creates a practical difficulty minor in nature, it evidences Ben Lewis’ intent to advance the Project to completion prior to Preliminary Plan expiration. Ben Lewis also negotiated and recorded among the Land Records an off-site Private Storm Drain Easement for the Project on Montgomery County’s adjacent property. A copy of which is attached hereto as **Exhibit C**.

A practical difficulty and undue hardship will result if the Preliminary Plan is not reinstated because Ben Lewis will lose the effort, time and resources invested into the post-approval financing and civil permitting work to date. Ben Lewis obtained Grade Establish Plan approval from DPS, has filed a sediment control permit with DPS, obtained signage and pavement marking plan and temporary traffic control plan approvals from the Montgomery County Department of Transportation, has a Hydraulic Planning Analysis approval from the Washington Suburban Sanitary Commission (“WSSC”) and is actively pursuing a DPS right-of-way permit, an access permit from Maryland State Highway Administration, WSSC System Extension Plan approval, and Maryland Department of Environment Notice of Intent to Discharge (NOI) Permit, all of which are on hold pending Plat approval and recordation. He has also engaged in discussions with Montgomery County to secure funding for the affordable housing component of the Project, which can serve as student and faculty housing because of its pedestrian trail connection to Montgomery College.

It is for these reasons that Ben Lewis respectfully requests that the Planning Board reinstate the Preliminary Plan.

IV. APF Extension & Subdivision Waiver are Justified.

Ben Lewis also requests that the APF validity be extended as part of this Planning Board approval to continue pursuing civil permits, construction funding from Montgomery

County⁷, construction financing and to construct the Project. Section 50.4.3.J.7 authorizes the Board to extend the APF determination for approved developments subject to certain findings. Section 50.4.3.J.7.d of the Subdivision Regulations sets forth the specific decision standards that must be satisfied for approval of the extension of the Preliminary Plan APF determination for mixed use development and identifies the length of any extension, as follows:

- d. *Nonresidential or mixed-use subdivisions.*
 - i. *The Board may extend a determination of adequate public facilities for a preliminary plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:*
 - (a) *the Department of Permitting Services issued building permits for structures that comprise at least 40% of the total approved gross floor area for the project;*
 - (b) *all of the infrastructure required by the conditions of the original preliminary plan approval has been constructed, or payments for its construction have been made; and*
 - (c) *the Department of Permitting Services either issued occupancy permits or completed a final building permit inspection for:*
 - (1) *structures that comprise at least 10 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed; or*
 - (2) *structures that comprise at least 5 percent of the total gross floor area approved for the project within the 4 years before an extension request is filed, if structures that comprise at least 60 percent of the total gross floor area approved for the project have been built or are under construction.*
 - ii. * * *
 - iii. *The length of any extension of the validity period granted under 7.d.i must be based on the approved new development schedule under 7.a.ii, but must not exceed:*
 - (a) *2.5 years for a subdivision with an original validity period of 7 years or less;*
or
 - (b) *6 years for a subdivision with an original validity period longer than 7 years.*

Ben Lewis has not validated the Preliminary Plan and has therefore, not obtained a building permit or commenced construction of the Project at the Property. Phase I of the APF determination for the Preliminary Plan has expired and Phase II and III expire on November 4th 2026 and 2027. See Exhibit A. As such, Ben Lewis requests the Planning Board waive these requirements for the grant of the requested 5-year APF extension for the reasons discussed below.

⁷ Ben Lewis has been in coordination with Montgomery County on affordable housing assistance for the Project and a resolution to those discussions are ongoing to date and need to be resolved to move the Project forward.

The Planning Board may waive or modify any portion of the Subdivision Regulations pursuant to § 50.9.1. Section 50.9.3.A of the Subdivision Regulations sets forth the specific decision standards that must be satisfied for approval of a waiver to limit the findings that must be satisfied in § 50.4.3.J.7 to extend an APF determination for a mixed-use development and to extend the APF determination for 5 years instead of the 2.5 years set forth in § 50.4.3.J.7.d.iii.(a). The following statements demonstrate how the proposed request satisfies these requirements:

1. *due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;*

It is a practical difficulty that Ben Lewis is unable to validate the Preliminary Plan prior to its expiration because of the Project challenges that were resolved following the departure of the development manager and the current unavailability of affordable housing funding through Montgomery County. As a result of these challenges, the Plat is on the cusp of approval and a building permit has not been issued for construction of Phase I of the Project, preventing Ben Lewis from meeting the requirements for extending an APF determination set forth in § 50.4.3.J.7.d of the Subdivision Regulations.

It is also a practical difficulty that an extension of the APF determination for this three (3)-phased Project is limited to 2.5 years because additional time is needed to secure financing and obtain a building permit for Phase I. A 2.5-year APF extension extends Phase I to May 4, 2028 and discussions with Montgomery County indicate that Project funding for this envisioned affordable housing development may be available in 2027. Alternative financing options remain impacted by post-pandemic high interest rates imposed to combat inflation and the County's decision to impose rent control legislation. These market conditions were more recently noted as significant barriers to development in the Planning Departments' Montgomery County Residential Development Pipeline Analysis Final Report ("Pipeline Analysis").⁸ Although there are rumors that rent control legislation may be revisited after the 2026 County Council election and recommendations from the Planning Department in the Pipeline Analysis to make specific changes, additional time is needed to finance the Project. It is imperative that Montgomery County has enough time to be able to provide the requested funding for the Project. Approving a five (5)-year extension conterminously with the Preliminary Plan validity period will conserve MNCPPC's resources and streamline the applicable processes, as Ben Lewis would otherwise require a second application and public hearing process for incremental extensions of the APF finding.

⁸ A copy of the Planning Departments' Montgomery County Residential Development Pipeline Analysis Final Report: https://montgomeryplanningboard.org/wp-content/uploads/2025/10/Pipeline-Analysis-Staff-Report_10.16.25.pdf

The application of § 50.4.3.J.7.d of the Subdivision Regulations to an APF extension for the Project is not needed to ensure the public health, safety, and general welfare because the Project meets the APF requirements if it were tested today under the 2024-2028 Growth and Infrastructure Policy and Subdivision Regulations

Pursuant to § 50.4.3.J.7.d of the Subdivision Regulations, the Planning Board “may only approve a preliminary plan when it finds that public facilities will be adequate to support and service the subdivision. Public facilities and services to be examined for adequacy include roads and transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics.”

As set forth in the Gorove Slade Traffic Impact Study dated August 23, 2019, as reconfirmed by The Traffic Groups’ Traffic Impact Statement, the proposed Project will not have a detrimental impact on the surrounding transportation network. Access to the Property will be along southbound 355 via a consolidated single curb cut for a new east-west public road that will extend through the Property to intersect with the new segment of Cider Barrel Drive that will connect the existing north and south stub segments through the Property. The Project also includes critical pedestrian and bicycle public improvements, including a trail connection to Montgomery College and a sixteen (16) foot shared use path within the 355 right-of-way to extend the Clarksburg to Gaithersburg Breezeway. Five (5) and six (6) foot sidewalks will extend throughout the Property for pedestrian connectivity, along both sides of the internal road networks and to connect all three (3) buildings. The Montgomery College trail connection is depicted below:

Off-site Trail Connection to Montgomery College

- Extensive coordination with MC and DEP
- Utilizes existing easement access along the SWM area
- 8'-0" wide natural surface trail
- Slopes ranging between 5% - 10%
- Final alignment to be coordinated with MC and DEP
- Master Plan recommended connection



Trail alignment shown for illustrative purposes only

The Project will install a traffic signal at Oxbridge Road/355 intersection, restrict through and left-turn movements at Germantown Road/Cider Barrel Drive and optimize signal timing at Middlebrook Road/355 and Germantown Road/355. Based on the significant amount of transportation improvements incorporated into the Project, there are adequate transportation vehicular, pedestrian and bicycle facilities to serve the Project.



As detailed in (a)(iii)(e) below, there continues to be adequate school capacity to serve the Project. The Project will generate eleven (11) less students than originally determined under the 2016-2020 Subdivision Staging Policy. The applicable elementary, middle and high schools continue to have adequate capacity to serve the Project without imposition of any Utilization Premium Payments.

Other available public facilities and services are adequate to serve the proposed Project. As the Property is in the S-1 and W-1 sewer and water categories, Ben Lewis proposes to extend existing water and sewer lines from Gunners Terrace to the Project within existing and proposed rights-of-way. There is also adequate existing storm drainage to serve the use.

Adequate police and fire protection also serve the Property. The nearest fire station (Station 34) is less than one (1) mile from the Property at 20633 Boland Farm Road in Germantown. Montgomery County Police 5D (Germantown) will serve the

Property and is also approximately 1.7 miles from the Property on Aircraft Drive in Germantown. Holy Cross Germantown Hospital is approximately 1 mile from the Property. However, the 2024-2028 Growth and Infrastructure Policy assumes police, fire, and health facilities are adequate unless the appropriate agency identifies a problem therewith.

Although the five (5)-year extension of the APF determination will extend the Project validity beyond the 2024-2028 Growth and Infrastructure Policy, it is anticipated that any subsequent Growth and Infrastructure Policy will continue to advance the overarching theme of incentivizing housing, especially affordable/attainable housing, throughout the County. It is not anticipated that any policy adjustments will be made to reimpose a development moratorium based on school capacity (adequate school capacity remains five (5) years after Preliminary Plan approval), that additional development within the vicinity of the Project will diminish the significance of the proposed transportation improvements or that there will be enough housing to meet population needs within the next five (5) years.

2. *the intent of the requirement is still met; and*

The intent of § 50.4.3.J.7.d of the Subdivision Regulations is ascertaining if the APF determination made under the relevant entitlement approval has vested through the investment and progress of the project so that a new APF determination that could generate additional applicant obligations is unjust and/or unconstitutional. Because the Project meets the adequacy standards of the 2024-2028 Growth and Infrastructure Policy and Subdivision Regulations, and any anticipated updates thereto, as articulated in 1 above, and includes significant transportation improvements, the intent of § 50.4.3.J.7.d of the Subdivision Regulations is still met with the requested waiver.

3. *the waiver is: (a) the minimum necessary to provide relief from the requirements; and (b) consistent with the purposes and objectives of the General Plan.*

The waiver is the minimum necessary to provide relief from the requirements because it limits the requirements for extending the Project's APF determination to those that the Project can meet. The waiver is consistent with the purposes and objectives of the General Plan because it preserves the entitlements required for construction of infill compact development along a corridor within an identified Medium Center and collocated next to Montgomery College, consistent with the General Plan's policies for economic competitiveness, environmental health and resilience and racial equity and social justice. Thrive Montgomery 2050, p.73 and 88.

This request otherwise complies with the remaining requirements for granting an APF extension set forth in § 50.4.3.J.7 of the Subdivision Regulations. The following statements demonstrate how the proposed request satisfies those requirements:

- a. *Application. Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
- i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.*

Upon the reinstatement of the Preliminary Plan, this request is filed before the applicable validity period expiration (November 4, 2025) in compliance with this requirement.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

Ben Lewis proposes the following new phasing plan for completion of the Project:

Phase	Benchmark See Conditions of Approval for Triggers	Extended Duration
I	Construct 45 multi-family units (Building A or B) <ul style="list-style-type: none"> Construct the extension of Cider Barrel Drive and Public Street A to approved public street standards. Construct a natural surface trail as approved by M-NCPPC Staff, Montgomery College, and the MCDEP Construct a 16-ft wide asphalt shared use path with a minimum 6-ft buffer from edge of pavement along the full frontage of 355. 	60 Months (5 Years)
II	Construct 97 additional multi-family units for a total of 142 units (Building A or B) <ul style="list-style-type: none"> Install a traffic signal at the intersection of Oxbridge Drive and 355. Improve the southern leg of the Cider Barrel Drive and MD Route 118 intersection to a right-in, right-out condition. Conduct signal optimization to reduce the average delay at the intersections of Middlebrook Road/355 and MD Route 118/355 as approved by staff from MCDOT and SHA. 	12 months (cumulative 72 months or 6 years)
III	Construct 47,887 square feet of nonresidential uses (Building C)	12 months (cumulative 84 months or 7 years)

- iii. *For each extension of an adequate public facilities determination:*
 (a) *the applicant must not propose any additional development above the amount approved in the original determination;*

Ben Lewis does not propose any development above the amount approved by the Preliminary Plan.

- (b) *the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

This requirement is noted.

- (c) *the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest;*

No additional development has occurred within the Project's vicinity beyond that contemplated in the background for the TIS. The Applicant proposes to make all transportation improvements incorporated into the Preliminary Plan and its conditions of approval. Therefore, an additional traffic study is unwarranted, and the development of the Project is not adverse to the public interest.

- (d) *an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot; and*

This requirement is not applicable to the Preliminary Plan because there is no prior approval for the Property.

- (e) *if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.*

The Project will generate thirty (37) students and as demonstrated below meets the schools adequacy test under the Subdivision Regulations and the 2024-2028 Growth and Infrastructure Policy. This is eleven (11) less students than originally determined at Preliminary Plan under the 2016-2020 Subdivision Staging Policy.

The Project proposes 142 multi-family units in two (2) four (4) story buildings that for adequacy purposes are classified as multi-family low-rise units. The Property is located within Germantown East, which is identified within the turnover school impact area. Pursuant to the FY 2026 student generation rates adopted July 1, 2025, low-rise

multifamily family units in the turnover school impact area generate 0.123 elementary school students per unit, 0.064 middle school students per unit and 0.083 high school students per unit. As applied, the Project will generate seventeen (17) (or 17.466) elementary school students, 9 (9.088) middle school students and eleven (11) (11.786) high school students, for a total of thirty-seven (37) students, which is eleven (11) less students than under the original adequacy test under the 2016-2020 Subdivision Staging Policy.

Students generated by the Project will attend Clarksburg High School, Rocky Hill Middle School and Fox Chapel Elementary School. Pursuant to the FY 2026 schools test adopted July 1, 2025, there is adequate capacity to serve the thirty-seven (37) students generated by the Project without the imposition of any Utilization Premium Payments.

- b. The Board may approve an amendment to the new development schedule approved under Section 4.3.J.7.a.ii if the applicant shows that financing has been secured for either: (i) completion of at least one new building in the next stage of the amended development schedule; or (ii) completion of infrastructure required to serve the next stage of the amended development schedule.*

This requirement is not applicable because financing has not yet been secured.

- c. Exclusively residential subdivisions....*

The Preliminary Plan was approved for a mixed-use subdivision and therefore, this requirement does not apply.

- d. Nonresidential or mixed-use subdivisions....*

This requirement cannot be strictly met for the reasons articulated above and Ben Lewis requests a waiver from these requirements, including the requirement that this Board grant incremental APF extensions not to exceed 2.5 years for projects with an initial APF validity period of seven (7) years or less, such as the Project.

- e. Applications with significant infrastructure investment.*

This requirement does not apply although it is anticipated that the transportation improvements associated with the Project are a significant investment that will exceed \$3,000,000 in cost.

- f. The validity period of a finding of adequate public facilities is not automatically extended under any circumstance, including when an applicant has completed all*

conditions imposed by the Board at the time of preliminary plan approval to meet adequate public facilities requirements.

Ben Lewis notes this provision and has filed this APF extension request.

- g. *If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.*

Ben Lewis submits that a new APF determination is not required because it is requesting an extension of an APF determination in conjunction with the reinstatement of the Preliminary Plan. Notwithstanding, the APF test requirements are met as articulated above.

- h. *No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.*

There is no combination of APF extensions because this is the first APF extension requested for Project. This extension will not exceed a total of 12 years from the date of the original APF expiration because it extends each phase for five (5) years.

Conclusion

This Application provides an opportunity to complete an affordable housing Project with vital vehicular and pedestrian connections, significant public and environmental improvements and additional laboratory uses to increase the desired mixed-use life sciences development in the Montgomery College District. For this and the foregoing reasons, Ben Lewis respectfully requests that the Planning Board grant the Extensions.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Casey L. Cirner

Encl.

cc: Matt Goundry, President, Ben Lewis Plumbing
Mike Birkland, Bohler
Kelli DiPietro, Bohler

EXHIBIT A

Preliminary Plan Validity Period and Adequate Public Facilities Phasing

Phase	Benchmark See Conditions of Approval for Triggers	Approved		Proposed	
		Validity Period	APF Duration	Validity Period	APF Duration
I	<p>Construct 45 multi-family units (Building A or B)</p> <ul style="list-style-type: none"> Construct the extension of Cider Barrel Drive and Public Street A to approved public street standards. Construct a natural surface trail as approved by M-NCPPC Staff, Montgomery College, and the MCDEP Construct a 16-ft wide asphalt shared use path with a minimum 6-ft buffer from edge of pavement along the full frontage of 355. 	<p>36 Months 3 Years from Initiation Date*</p> <p>December 4, 2020 – December 4, 2023</p>	<p>60 Months (5 Years) from Date of Mailing**</p> <p>November 4, 2020 – November 4, 2025</p>	<p>12 Months 1 year from Public Hearing***</p> <p>March 12, 2026 – March 12, 2027</p>	<p>60 Months (5 Years) from Expiration^</p> <p>November 4, 2025 – November 4, 2030</p>
II	<p>Construct 97 additional multi-family units for a total of 142 units (Building A or B)</p> <ul style="list-style-type: none"> Install a traffic signal at the intersection of Oxbridge Drive and 355. Improve the southern leg of the Cider Barrel Drive and MD Route 118 intersection to a right-in, right-out condition. Conduct signal optimization to reduce the average delay at the intersections of Middlebrook Road/355 and MD Route 118/355 as approved by staff from MCDOT and SHA. 		<p>12 months (cumulative 72 months or 6 years)</p> <p>November 4, 2020 – November 4, 2026</p>		<p>60 Months (5 Years) from Expiration</p> <p>November 4, 2026 – November 4, 2031</p>
III	<p>Construct 47,887 square feet of nonresidential uses (Building C)</p>		<p>12 months (cumulative 84 months or 7 years)</p> <p>November 4, 2020 – November 4, 2027</p>		<p>60 Months (5 Years) from Expiration</p> <p>November 4, 2027 – November 4, 2032</p>

* Initiation Date = 30 days + mailing date of November 4, 2020 (December 4, 2023).

** The Date of Mailing requirement is imposed by Preliminary Plan Condition 2 and is November 4, 2020.

*** The public hearing date of March 12, 2026 is being used to quantify the duration for this purpose. To align with current timeframe calculations, the triggering date could also be the Initiation Date of the Preliminary Plan Amendment.

^ The Expiration Date means the date that the approved APF finding for that Phase expires.

EXHIBIT B

APPROVED BY MP

JAN 26 2022

PRIVATE STORM DRAIN EASEMENT

\$ N/A RECORDATION TAX PAID
\$ N/A TRANSFER TAX PAID

THIS PRIVATE STORM DRAIN EASEMENT ("Easement") is made this 28th day of October, 2021, by MONTGOMERY COUNTY, MARYLAND, its successors and assigns (the "Grantor") and BRL HOLDINGS LLC, a Maryland limited liability company ("Grantee"), its successors and assigns. The Grantor and Grantee are hereinafter sometimes referred to as the Parties.

WHEREAS, the Grantor is the owner of certain real property located in Montgomery County, Maryland (the "Property"), which is described on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Grantee is the owner of certain real property located in Montgomery County, Maryland, which is described on Exhibit A, is adjacent to the Property and contains certain stormwater management facilities (the "Grantee Property"); and

WHEREAS, the Grantor has agreed to provide an easement to the Grantee over, through and under the Property for the installation, maintenance, repair and replacement of a storm drain pipe and appurtenant equipment for connection to the stormwater management facilities on the Grantee Property (the "Storm Drain System"); and

WHEREAS, the Grantor desires to grant the easement subject to the covenants and conditions provided herein.

NOW THEREFORE, in consideration of the payment of One Dollar (\$1.00) paid by Grantee to Grantor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Grantor hereby grants to Grantee a nonexclusive perpetual easement and right of passage on, over, under and through the area described and shown on Exhibit B (the "Easement Area"), which is attached hereto and incorporated herein, for the construction, installation, maintenance, operation, inspection, repair and replacement of the Storm Drain System for connection to the stormwater management facilities serving the Grantee Property. The easement and right of passage granted herein is granted and conveyed together with the rights, privileges, appurtenances, and advantages thereto belonging or appertaining, unto and to benefit forever the Grantee, its heirs, successors and assigns.

2. Grantor agrees that it will not erect nor permit to be erected any buildings or structures of any nature whatsoever within the Easement Area, that will interfere with the proper and efficient operation of the Storm Drain System. Grantor further agrees that it will not fill nor excavate within the Easement Area without the consent of Grantee. Grantor will provide and maintain perpetual access over the Property to the Easement Area to the Grantee and its agents, and contractors for the purposes provided herein.

3. Grantee accepts the easement and right of passage granted herein and will properly maintain the Storm Drain System within the Easement Area, at Grantee's sole cost and

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 65128, p. 0081, MSA_CE63_65085, Date available 01/31/2022, Printed 11/03/2025.

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expense and in accordance with the Maintenance Covenants attached hereto as Exhibit C and incorporated herein.

4. Grantor specially warrants this Easement and agrees to execute, acknowledge and deliver to Grantee such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement or to confirm or perfect any right created hereunder.

5. All of the covenants and conditions contained in this Easement run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. No covenant or agreement contained in this Easement shall inure to the benefit of any party other than the Grantor and Grantee and their respective successors and assigns.

6. This Easement constitutes the entire agreement between the Parties and may not be modified, amended or terminated except by an instrument in writing signed by both of the Parties.

7. This Easement shall be governed by and construed in accordance with the laws of the State of Maryland and the laws of Montgomery County, Maryland, and shall be recorded among the land records of Montgomery County, Maryland.

8. Invalidation of any of the terms or provisions herein shall in no way affect any other provisions, which shall remain in full force and effect.

9. This Easement may be signed in counterparts, which together, shall be considered one instrument.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto affixed their hands and seals the day and year first herein above written.

[SIGNATURE PAGES FOLLOW]

WITNESS:

Luisa A Rodriguez
Printed Name: Luisa Sabrina Rodriguez

GRANTOR:

MONTGOMERY COUNTY, MARYLAND

By: Yaakov Weissmann
Printed Name: Yaakov "Jake" Weissmann
Title: Assistant Chief Administrative Officer

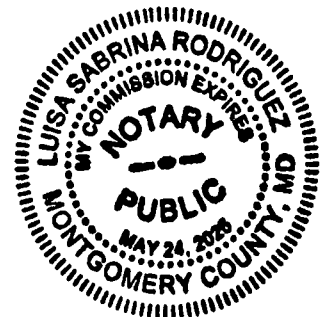
STATE OF MARYLAND : SS
COUNTY OF Montgomery

I HEREBY CERTIFY that on the 21st day of January, 2022, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Yaakov "Jake" Weissmann, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who acknowledged the he/she, having been properly authorized, executed the same on behalf of Montgomery County, Maryland in the capacity therein stated for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Luisa A Rodriguez
Notary Public Luisa Sabrina Rodriguez

My Commission Expires: May 24, 2025



WITNESS:

M. S. V. G.
Printed Name

GRANTEE:

BRL HOLDINGS LLC, a Maryland limited liability company

By: [Signature]
Printed Name: MATT GOUNDRY
Title: REP.

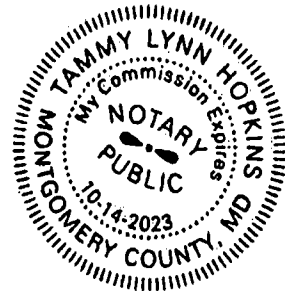
STATE OF MARYLAND : SS
COUNTY OF Montgomery

I HEREBY CERTIFY that on the 28th day of October, 2021, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared MATT GOUNDRY, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who acknowledged the he/she, having been properly authorized, executed the same on behalf of BRL Holdings LLC, a Maryland limited liability company, in the capacity therein stated for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 10/14/2023



ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

[Signature]
Judyann M. Lee

EXHIBIT A
Description of the Properties

GRANTOR PROPERTY:

Parcel D, as shown on a subdivision plat entitled "Resubdivision Record Plat Lots 116 Through 126 And Parcels C & D, MARY J. BOLAND SUBDIVISION" recorded among the Land Records of Montgomery County, Maryland as Plat No. 21336.

09-03290263

GRANTEE PROPERTY:

The property known as 20220 Frederick Road, Germantown, Maryland 20876, being the same property conveyed to BRL Holdings LLC from Benjamin R. Lewis by Deed dated December 4, 2009 and recorded among the Land Records of Montgomery County, Maryland in Liber 38902 at folio 75.

09-00768925

09-02533988

4. Covenantor agrees to indemnify and save the County harmless from any and all claims for direct damages to persons or property arising from the Covenantor's exercise of its rights under the Private Storm Drain Easement and its performance of the inspection, structural maintenance, or repair of the Storm Drain System. Covenantor agrees to carry and maintain, at its sole cost and expense, liability insurance covering the Storm Drain System and its activities within the Easement Area, against personal injury or death and property damage occurring upon the Property in such amounts as are reasonably acceptable to the County. The County agrees to indemnify and save the Covenantor harmless from any and all claims for direct damages to persons or property caused by an act or omission of the County, including its failure to provide perpetual access to the Easement Area in accordance with the Private Storm Drain Easement. The County's liability shall be subject to the provision, types of liability, notice requirements and liability amounts established in the Local Government Tort Claims Act, Section 5-301 *et seq.*, Courts and Judicial Proceedings Article, *Annotated Code of Maryland*, as amended.

5. Notices between the Parties pursuant to this Covenant or the Private Storm Drain Easement shall be hand-delivered, sent via nationally recognized over-night carrier or sent by certified mail, postage pre-paid, as follows:

a. BRL Holdings LLC

PO Box 1510

Clarkburg MD 20871

Attn: Mark Susi / Matt Goundry

(301) 976-6284

blewis555@aol.com

MAIL
TO:

With a copy to:

Judyann M. Lee, Esq.

McMillan Metro, P.C.

7811 Montrose Road

Suite 400

Potomac, Maryland 20854

(240) 778-2308

jlee@mcmillanmetro.com

b. Montgomery County, Maryland
Department of Environmental Protection
2425 Reddie Drive, 4th Floor
Wheaton, Maryland 20902
Attn: Pamela Parker
(240) 777-7758
Pamela.parker@montgomerycountymd.gov

6. This Covenant shall run with the land and shall bind the Covenantor and County, and their respective successors and assigns, and shall bind all present and subsequent owners of the Property and the property served by the Storm Drain System.

7. This Covenant may not be modified, amended or terminated except by an instrument in writing signed by both of the Parties.

8. This Covenant shall be governed by and construed in accordance with the laws of the State of Maryland and the laws of Montgomery County, Maryland, and shall be recorded among the land records of Montgomery County, Maryland.

9. Invalidation of any of the terms or provisions herein shall in no way affect any other provisions, which shall remain in full force and effect.

10. This Covenant may be signed in counterparts, which together, shall be considered one instrument.

IN WITNESS WHEREOF, the Covenantor and County have hereunto affixed their hands and seals the day and year first herein above written.

[SIGNATURE PAGES FOLLOW]

WITNESS:

COUNTY:

Luisa A Rodriguez

Printed Name Luisa Sabrina Rodriguez

MONTGOMERY COUNTY, MARYLAND

By: *[Signature]*

Printed Name: Yaakov "Jake" Weissmann.

Title: Assistant Chief Administrative Officer

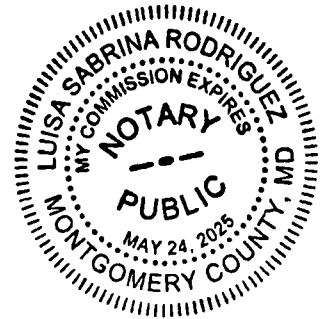
STATE OF MARYLAND : SS
COUNTY OF Montgomery

I HEREBY CERTIFY that on the 21st day of January, 2022 before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Yaakov "Jake" Weissmann, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who acknowledged the he/she, having been properly authorized, executed the same on behalf of Montgomery County, Maryland in the capacity therein stated for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Luisa A Rodriguez
Notary Public Luisa Sabrina Rodriguez

My Commission Expires: May 24, 2025



WITNESS:

Mark Soren
Printed Name

COVENANTOR:

BRL HOLDINGS LLC, a Maryland limited liability company

By: [Signature]
Printed Name: MATT GOWNIDRY
Title: CEO

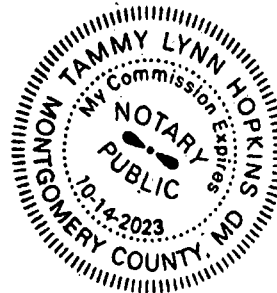
STATE OF MARYLAND : SS
COUNTY OF Montgomery

I HEREBY CERTIFY that on the 29th day of October, 2021, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Matt Gownidry, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who acknowledged the he/she, having been properly authorized, executed the same on behalf of BRL Holdings LLC, a Maryland limited liability company, in the capacity therein stated for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

[Signature]
Notary Public

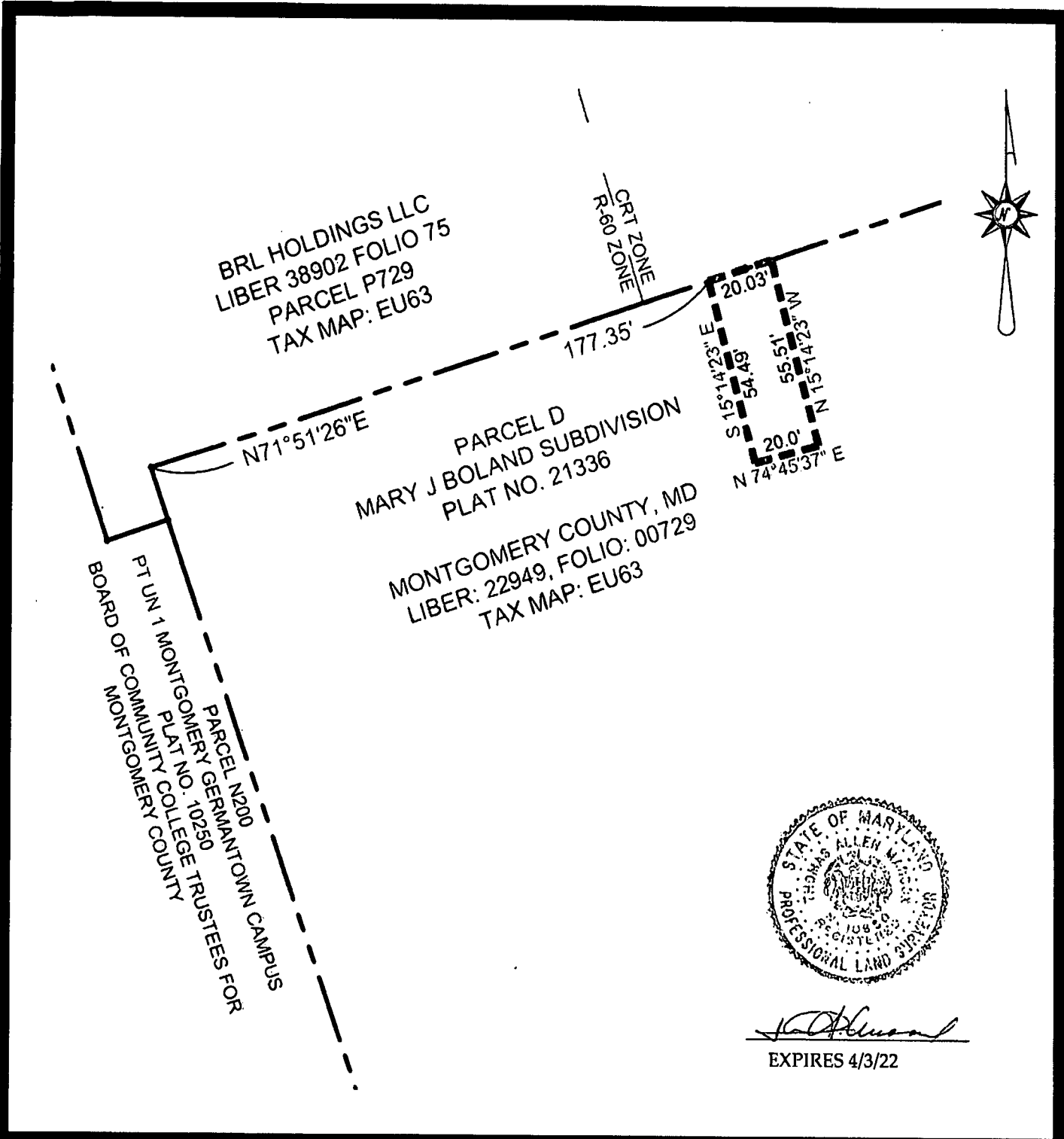
My Commission Expires: 10/14/2023



ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

[Signature]
Judyann M Lee



Thomas A. Maddox
 EXPIRES 4/3/22

"EXHIBIT B"
STORM DRAIN EASEMENT
ACROSS PART OF
 PARCEL D
 MARY J BOLAND SUBDIVISION
 PLAT 21336
 ELECTION DISTRICT 9
 MONTGOMERY COUNTY, MARYLAND
 SCALE 1" = 40' JUNE 2021

THOMAS A. MADDOX
PROFESSIONAL LAND SURVEYOR
 8933 SHADY GROVE COURT
 GAITHERSBURG, MARYLAND 20877
 301-984-5804

THOMAS A. MADDOX
PROFESSIONAL LAND SURVEYOR

Registered to Practice:
Maryland
Virginia
District of Columbia

8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 984-5804
(301) 330-0812
FAX(301) 984-6865

7/28/2021

Description for Storm Drain Easement over part of "Mary J. Boland Subdivision", Parcel D as shown on a plat of subdivision recorded as Plat 21336 among the land records of Montgomery county Maryland and being more particularly described as follows,

Storm Drain Easement

Beginning for the same at a point on the north line of Parcel D, said point being 177.35 feet from the west end thereof; thence departing the north line and crossing part of Parcel D

S 15°14'23" E – 54.49 feet to a point; thence

N 74°45'37" E – 20.0 feet to a point; thence

N 15°14'23" W – 55.51 feet to a point; thence

S 71°51'26" W – 20.03 feet to the point of beginning containing 1100 square feet of land, more or less.

Surveyor's Certification

I hereby certify that I was in responsible charge over the preparation of this metes and bounds description in compliance with requirements set forth in 09.13.06.09 of the COMAR Regulations.





License expires 4/3/22

Exhibit C

PRIVATE STORM DRAIN MAINTENANCE COVENANT

THIS PRIVATE STORM DRAIN MAINTENANCE COVENANT ("Covenant") is made this 28th day of October, 2021, by **BRL HOLDINGS LLC**, a Maryland limited liability company ("Covenantor"), its successors and assigns, and **MONTGOMERY COUNTY, MARYLAND**, its successors and assigns ("County"). The Covenantor and County are hereinafter sometimes referred to as the Parties.

WHEREAS, the County is the owner of certain real property located in Montgomery County, Maryland (the "Property"), which is described on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Parties entered into that certain Private Storm Drain Easement, to be recorded among the Land Records of Montgomery County, Maryland simultaneously herewith, wherein the County has granted to the Covenantor an easement and right of passage over the Property for the installation, maintenance, operation, and inspection of a storm drain system for connection to stormwater management facilities serving the Covenantor's property (the "Storm Drain System"); and

WHEREAS, the Private Storm Drain Easement, which is attached hereto as Exhibit B and fully incorporated herein, requires Covenantor to properly maintain the Storm Drain System within the Easement Area described and shown therein on Exhibit B attached thereto, at Grantee's sole cost and expense and in accordance with this Covenant.

NOW THEREFORE, in consideration of the payment of One Dollar (\$1.00) paid by Grantee to Grantor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. The Covenantor must provide routine inspection and structural maintenance of the Storm Drain System within the Easement Area depicted in Exhibit B of the Private Storm Drain Easement as needed to ensure that the Storm Drain System remains in proper working condition in accordance with approved design standards and the laws of Montgomery County, Maryland. Covenantor will undertake all reasonable measures to return the Easement Area to its original condition whenever it undertakes repairs and maintenance in accordance with this Covenant.

2. The Covenantor agrees to provide the County with at least seven (7) days prior notice before performing any inspection, structural maintenance or repair to the Storm Drain System, except in the case of an emergency, in which case Covenantor will provide the County with as much notice as reasonably practical.

3. If, after reasonable notice by the County, the Covenantor fails to maintain the Storm Drain System in accordance with this Covenant, the County may perform the maintenance needed to correct the condition and collect any costs incurred as a result from the Covenantor in the same manner as real property taxes are collected. In addition, the County may seek reimbursement under any other method legally available to collect debts owed to the County.

LR - Easement
(No-Taxes) Recording
Fee 75.00
Name: BRL HOLDINGS LLC
Ref:
LR - Easement
(No-Taxes) Surcharge 40.00
=====
SubTotal: 115.00
=====
Total: 115.00
01/26/2022 12:56
CC15-FG
#15827076 CC0602 -
Montgomery
County/CC06.02.06 -
Register 06



**DOCUMENT VALIDATION PAGE
FOR CLERK'S USE ONLY
(EXCLUDED FROM PAGE COUNT FOR CERTIFIED COPY)**

KAREN A. BUSHELL
Clerk of the Circuit Court for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850
Recording and Licensing
(240) 777-9470
BOOK: 65128 PAGE: 93

EXHIBIT C

OCT 06 2021

\$ Exempt RECORDATION TAX PAID
\$ Exempt TRANSFER TAX PAID

CONSERVATION DEED OF EASEMENT ("Easement")
Category I

DEFINITIONS

Grantor: BRL Holdings LLC, a Maryland limited liability company, fee simple owner(s) of real property subject to Plan approval conditioned on recordation of a Category I conservation easement agreement.

Grantee: Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

Property: Part of Parcel P729, Tax Map EU63 as recorded among the Land Records of Montgomery County, Maryland in a deed dated December 9, 2009 in Liber 38902 at folio 075.

Planning Board: Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission.

Planning Director: Director of the Montgomery County Planning Department of The Maryland-National Capital Park and Planning Commission, or the Director's designee.

Plan: Forest Conservation Plan No. 120200170/ 820200140, approved by the Planning Board or Planning Director pursuant to Chapter 22A of the Montgomery County Code.

Exhibit A: Approved Forest Conservation Plan No. 120200170/ 820200140.

Exhibit B: Description and sketch of the Easement over and across the Property.

WITNESSETH

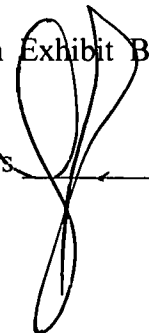
The Easement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor (or Grantor's agent) has obtained approval of a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or Planning Director approved Grantor's Plan conditioned upon Grantor subjecting the Property or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); and

WHEREAS, the location of this Easement is as shown and described on Exhibit B attached hereto and incorporated by reference into the terms of this Easement; and

Grantor Initials



MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 64208, p. 0266, MSA_CE63_64165. Date available 10/08/2021. Printed 10/23/2025.

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WHEREAS, the purpose of this Easement is to protect existing and future forest cover, individual trees, streams and adjacent buffer areas, wetlands and other sensitive natural features, and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the portion of the Property subject to the Easement ("Easement area") and prevention of any alteration, construction, or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the Easement area, which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the Grantor and Grantee (collectively referred to as the "Parties") intend for the conditions and covenants contained in this Easement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Grantor intends that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this Easement for no monetary consideration but for the purpose of ensuring compliance with a Plan approved in accordance with Montgomery County law and placement of appropriate measures for the long-term protection of conservation areas in accordance with Montgomery County Code, Section 22A-12(h)(2). The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an easement on the Property of the size and location described in Exhibit B attached hereto and incorporated by reference into the terms of this Easement, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant real running with the title of the land and is granted to preserve, protect, and maintain the general topography and natural character of the land. The Grantor does hereby waive any challenge to the validity of this Easement whether or not shown on a plat. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the Grantor.
2. No living trees or shrubs (of any size or type) shall be cut down, removed, or destroyed without prior written consent from the Planning Director. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Director, unless such notice is not practical in an emergency situation or removal of trees is undertaken pursuant to a forest management plan approved by the Planning Director.
3. No plant materials (including, but not limited to brush, saplings, undergrowth, or

Grantor Initials _____

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 64208, p. 0267, MSA_CE63_64165. Date available 10/08/2021. Printed 10/23/2025.

non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan and/or as otherwise permitted pursuant to any variance granted by the Commission. Noxious weeds (limited to those weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County *Trees Technical Manual*) may be removed as required by law, but the method of removal must be consistent with the limitations contained within this Easement. Vegetation removal shall be limited to noxious weeds and exotic and invasive plants only, and protective measures must be taken to protect nearby trees and shrubs.

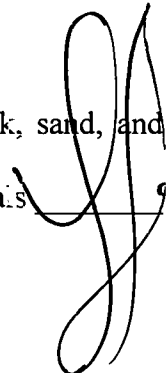
4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.

5. Nothing in this Easement precludes activities necessary to implement afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

6. The following activities may not occur at any time within the Easement area:

- a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).
- b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment, and retaining walls.
- c. Construction of any roadway or private drive.
- d. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).
- e. Industrial or commercial activities.
- f. Timber cutting, unless conducted pursuant to an approved variance and/or forest management plan approved by the Planning Director and the Department of Natural Resources for the State of Maryland.
- g. Location of any component of a septic system or wells.
- h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand, and

Grantor Initials



other materials.

- i. Diking, dredging, filling, or removal of wetlands.
- j. Pasturing of livestock (including horses) and storage of manure or any other effluent.
- k. Stream alteration.

7. Nothing in this Easement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the Easement area, if said structures, facilities, or utilities are (i) shown on the approved Plan and (ii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust, or grass clippings shall occur within the Easement area. Natural biodegradable materials may be allowed in a properly located, designed, managed, and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

9. Fences consistent with the purposes of the Easement may be erected within the Easement area if shown on the Plan or only after written approval from the Planning Director.

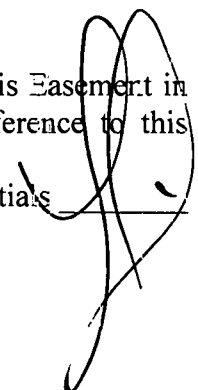
10. Unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director. Other paths or trails may be allowed only if shown on the Plan.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement area.

12. Grantor authorizes Planning Board representatives to enter the Property and Easement area at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors, or assigns, have complied with the restrictions, conditions, and easements established herein. This Easement does not convey to the general public the right to enter the Property or Easement area for any purpose. This Easement does not restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. The Grantor does hereby waive any challenge to the validity of this Easement in the event it is not shown on a plat, and Grantor agrees to make specific reference to this

Grantor Initials _____



Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed.

14. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Easement.

15. Upon finding a violation of any of the restrictions, conditions, covenants, and easements established by this Easement, the Planning Director and the Planning Board shall have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

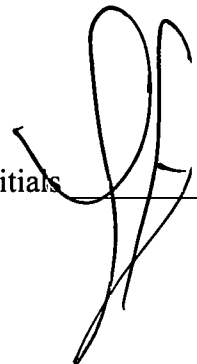
16. All written notices required by this Easement shall be sent to the Planning Director, M-NCPPC, 2425 Reedy Drive, Wheaton, Maryland 20902.

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

[SIGNATURE PAGE FOLLOWS]

MAIL TO: Maddox Thomas A
8933 Shady Grove CT
Gaithersburg, MD 20877

Grantor Initials



IN WITNESS WHEREOF, Grantor has caused to be executed this Easement to be signed by itself or its duly authorized officer as of this 26th day of August, 2021.

WITNESS:

Stephen Norris
Stephen Norris
Printed Name

GRANTOR:

BRL HOLDINGS LLC, a Maryland limited liability company

By: [Signature]

Name: Matthew Goundry

Its: Rep.

7215 Ridgewood Terrace
Chevy Chase, MD 20815
703-868-2832

NOTARY STATEMENT

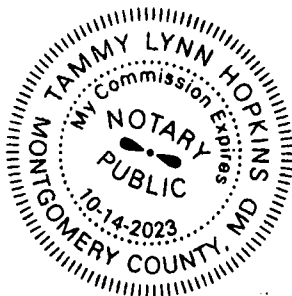
State of Maryland

County of Montgomery

On this 26th day of August, 2021 before me, the undersigned individual, personally appeared Matthew Goundry, who acknowledged to be the Representative, of BRL Holdings LLC, and that as such being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL



[Signature]
Signature of notary public

My commission expires 10/14/2023

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 64208, p. 0272, MSA_CE63_64165. Date available 10/08/2021. Printed 10/23/2025.

ATTORNEY CERTIFICATION

In accordance with Section 3-104(f)(1) of the Real Property Article of the Annotated Code of Maryland, I certify that this instrument was prepared by the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.

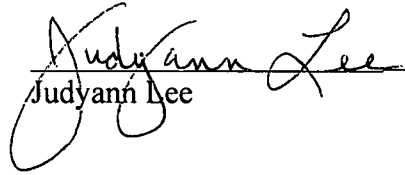

Judyann Lee

EXHIBIT A

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 64208, p. 0275, MSA_CE63_64165. Date available 10/08/2021. Printed 10/23/2025.

FOREST RETENTION AREA

MONTGOMERY COUNTY, MARYLAND

PROJECT NO. 2019-001

DATE: 02/07/2020

SCALE: 1" = 100'

ANALYSIS OF SITE CONDITIONS FOR THE PLANNING AND REGULATING AUTHORITIES

Project Description: The College View Campus, located at the intersection of College View Road and ...

Site Conditions: The site is currently a forested area with a mix of tree species and a dense canopy. The terrain is relatively flat with some minor depressions. The surrounding area is a mix of residential and commercial development.

Regulatory Requirements: The site is subject to the Montgomery County Forest Conservation Act and the Montgomery County Zoning Ordinance. The site is currently zoned for residential use, but the proposed development is for a school campus. The Forest Conservation Act requires that any forested area be preserved to the maximum extent possible.

Proposed Development: The proposed development consists of a school campus with a main building, a gymnasium, and a parking lot. The campus is located on a portion of the forested area. The proposed development is consistent with the Montgomery County Zoning Ordinance and the Forest Conservation Act.

Impact Assessment: The proposed development will have a minimal impact on the forested area. The site is currently a forested area with a mix of tree species and a dense canopy. The proposed development will be located on a portion of the forested area, and the remaining forested area will be preserved to the maximum extent possible.

Recommendations: The proposed development is consistent with the Montgomery County Zoning Ordinance and the Forest Conservation Act. The site is currently a forested area with a mix of tree species and a dense canopy. The proposed development will be located on a portion of the forested area, and the remaining forested area will be preserved to the maximum extent possible.

Tree ID	Species	DBH (in)	Height (ft)	Health	Notes
001	Red Oak	12.0	25.0	Good	...
002	White Oak	10.0	20.0	Good	...
003	Black Oak	8.0	15.0	Good	...
004	Red Oak	15.0	30.0	Good	...
005	White Oak	12.0	25.0	Good	...
006	Black Oak	10.0	20.0	Good	...
007	Red Oak	14.0	28.0	Good	...
008	White Oak	11.0	22.0	Good	...
009	Black Oak	9.0	18.0	Good	...
010	Red Oak	13.0	26.0	Good	...
011	White Oak	10.0	20.0	Good	...
012	Black Oak	8.0	15.0	Good	...
013	Red Oak	16.0	32.0	Good	...
014	White Oak	13.0	27.0	Good	...
015	Black Oak	11.0	23.0	Good	...
016	Red Oak	14.0	28.0	Good	...
017	White Oak	12.0	25.0	Good	...
018	Black Oak	10.0	20.0	Good	...
019	Red Oak	15.0	30.0	Good	...
020	White Oak	13.0	27.0	Good	...

PROPOSED DEVELOPMENT

Forest Retention Area

Planting Detail - Shrub

Planting Detail - Tree

Planting Detail - Shrub

Planting Detail - Tree

PRELIMINARY / FINAL FOREST CONSERVATION PLAN

College View Campus

Montgomery County, Maryland

B&A Planning & Architecture, Inc.

1000 ...

DATE: February 7, 2020

SCALE:

THOMAS A. MADDOX
PROFESSIONAL LAND SURVEYOR

Registered to Practice:
Maryland
Virginia
District of Columbia

8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 984-5804
(301) 330-0812
FAX(301) 984-6665

**Description for a Category I Conservation Easement
over the property of
BRL HOLDINGS LLC
Liber 38902 at Folio 75
Election District No. 9
Montgomery County, Maryland**

Description for Category I Conservation Easements over part of a tract of land described in a Confirmatory Deed from Benjamin R. Lewis to BRL Holdings LLC, dated December 4, 2009, and recorded in Liber 38902 at Folio 075, among the land records of Montgomery County, and being more particularly described as follows:

Easement Area 1

Beginning for the same at a point on the final or S 77°41'45" W - 411.95 foot line in the description for Parcel No. 09-00768925 in the aforementioned deed, said point being 101.5' from the west end thereof, thence with the 101.5' of said line and also with the 1st, 2nd, and 3rd lines thereof, bearings and distances adjusted by survey,

- 1) S71° 53' 05"W - 120.50 feet; thence**
- 2) S18° 38' 24"E - 210.32 feet; thence**
- 3) N71° 53' 15"E - 19.72 feet; thence with the 4th and part of the 3rd lines, reversed, in the description for saving and excepting for Parcel No. 09-00768925 in the aforementioned deed**
- 4) N19° 06' 15"W - 16.03 feet ; thence**
- 5) N71° 51' 26"E - 177.35 feet; thence departing the outline and crossing the land,**
- 6) N15° 14' 23"W - 23.00 feet ; thence**
- 7) N52° 43' 30"W - 22.66 feet ; thence**
- 8) N63° 27' 01"W - 10.00 feet ; thence**
- 9) N19° 14' 16"W - 16.00 feet; thence**
- 10) N61° 16' 17"W - 84.00 feet; thence**
- 11) N24° 14' 45"W - 36.00 feet; thence**
- 12) N20° 52' 03"W - 11.00 feet ; thence**
- 13) N16° 28' 48"W - 10.35 feet ; thence**
- 14) N05° 41' 27"W - 11.41 feet to the point of beginning the Area being 29893.47 SqFt or 0.69 Acres.**

Easement Area 2

Beginning for the same at a point on the 3rd line, in the description for saving and excepting for Parcel No. 09-00768925 in the aforementioned deed, said point being 197.38' from the west end thereof, thence with said line, reversed, bearings and distances adjusted by survey,

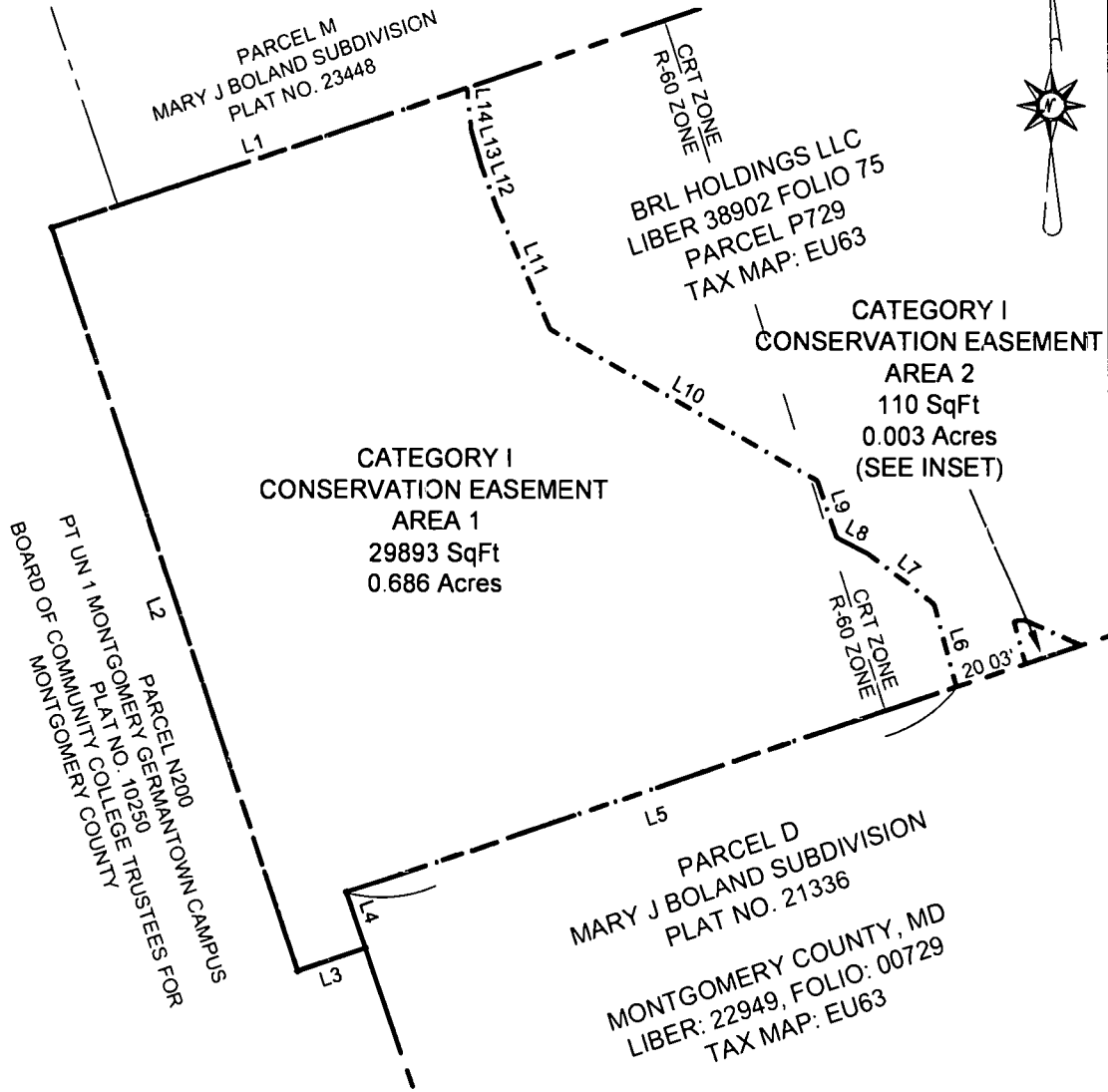
- 1) N71° 51' 26"E - 16.23 feet ; thence
- 2) N66° 26' 31"W - 17.00 feet ; thence
- 3) S84° 49' 58"W - 3.01 feet ; thence
- 4) S15° 14' 23"E - 12.00 feet to the True Point of Beginning the Area being 109.56 SqFt or 0.00 Acres.





Professional Land Surveyor – MD #10850 (Expires 4/3/22)

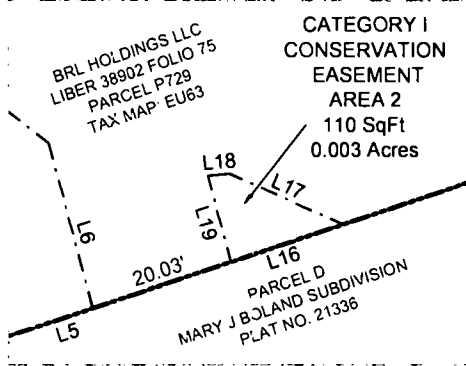
"EXHIBIT B"



LINE TABLE

LINE	BEARING	DISTANCE
L1	S71°53'05"W	120.50'
L2	S18°38'24"E	210.32'
L3	N71°53'15"E	19.72'
L4	N19°06'15"W	16.03'
L5	N71°51'26"E	177.35'
L6	N15°14'23"W	23.00'
L7	N52°43'30"W	22.66'
L8	N63°27'01"W	10.00'
L9	N19°14'16"W	16.00'
L10	N61°16'17"W	84.00'
L11	N24°14'45"W	36.00'
L12	N20°52'03"W	11.00'
L13	N16°28'48"W	10.35'
L14	N5°41'27"W	11.42'
L16	N71°51'26"E	16.23'
L17	N66°26'31"W	17.00'
L18	S84°49'58"W	3.01'
L19	S15°14'23"E	12.00'

INSET OF AREA 2 1" = 20'



Thomas A. Maddox
EXPIRES 4/3/22

**CATEGORY I
CONSERVATION EASEMENT
ACROSS PART OF THE LAND OF**

BRL HOLDINGS LLC
LIBER 38902 FOLIO 75
PARCEL P729 TAX MAP: EU63
ELECTION DISTRICT 9
MONTGOMERY COUNTY, MARYLAND
SCALE 1" = 40' AUGUST 2021

THOMAS A. MADDOX
PROFESSIONAL LAND SURVEYOR
8933 SHADY GROVE COURT
GAITHERSBURG, MARYLAND 20877
301-984-5804

LR - Easement
(No-Taxes) Recording
Fee 75.00
Name: BR'L HOLDINGS LLC
Ref:
LR - Easement
(No-Taxes) Surcharge 40.00

=====
SubTotal: 115.00
=====

Total: 115.00

10/06/2021 12:01

CC15-CP

#15493156 CC0002 -

Montgomery

County/CC06.02.06 -

Register 06



DOCUMENT VALIDATION PAGE
FOR CLERK'S USE ONLY
(EXCLUDED FROM PAGE COUNT FOR CERTIFIED COPY)

KAREN A. BUSHELL

Clerk of the Circuit Court for Montgomery County

50 Maryland Avenue

Rockville, Maryland 20850

Recording and Licensing

(240) 777-9470



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 20-107
Preliminary Plan No. 120200170
College View Campus
Date of Hearing: October 8, 2020

NOV 04 2020

RESOLUTION

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

WHEREAS, on March 12, 2020, Woodside Ventures & Realty Services ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three lots on 4.98 acres of land in the CRT-0.75, C-0.25, R-0.50, H-40 and R-60/TDR-12 zone, located on the east side of Frederick Road, approximately 500 feet north of Cider Press Place ("Subject Property"), in the Germantown East Policy Area and 2009 *Germantown Employment Area Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120200170, College View Campus ("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 September 25, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 8, 2020, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 8, 2020, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Verma, with a vote of 5-0; Chair Anderson, Commissioners Cichy, Fani-Gonzalez, Patterson, and Verma voting in favor.

2425 Reedie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605 Fax: 301.495.1320
Approved as to  www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org
Legal Sufficiency: _____

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200170 to create three lots on the Subject Property, subject to the following conditions:¹

All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions.²

General Approval

Density

1. The Preliminary Plan is limited to three (3) lots for a total development of up to 183,596 square feet, including up to 135,709 square feet of residential uses with up to 142 multi-family dwelling units, including 25% MPDU's, and up to 47,887 square feet of non-residential uses on the Subject Property.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-four (84) months from the date of mailing of this Planning Board Resolution, according to the following development schedule as show on the Certified Preliminary Plan:

Phase I – Within 60 months

Construct up to 50 multi-family units (either Building A or B).

Phase II – Within 72 months

Construct up to an additional 92 multi-family units for a cumulative total of up to 142 multi-family units (Building A or B).

Phase III – Within 84 months

Construct up to 47,887 square feet of commercial uses (Building C).

Outside Agencies

3. The Planning Board has reviewed and accepts the recommendations of the MCDOT in its letter dated September 25, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by

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.

MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. The Planning Board has reviewed and accepts the recommendations of the SHA in its letter dated August 25, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
7. 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 August 7, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth 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.
8. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated June 2, 2020 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA"), in its correspondence dated August 7, 2020, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

Concurrent Site Plan Approval

10. Before submitting a record plat application or any demolition, clearing or grading for the Subject Property, the Applicant must receive Certification of Site Plan No. 820200140. The number and location of site elements including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks and bike paths are determined through site plan review and approval.
11. If an approved 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 amendment.

Environment

Forest Conservation

12. The Applicant must comply with the following conditions of approval for the Preliminary/Final Forest Conservation Plan No. 120200170, approved as part of this Preliminary Plan:
 - a) Prior to Certification of the Preliminary Plan, the Applicant must revise the Preliminary/Final Forest Conservation Plan to address the outstanding comments in eplans, including showing the off-site natural surface path connection alignment.
 - b) Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers as specified on the approved Preliminary/Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
 - c) Within the first planting season following the release of the 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 plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling at least 25 caliper inches as shown on the approved Preliminary/Final FCP. Mitigation must be provided in the form of planting native canopy trees. These trees are in addition to the trees planted

to satisfy the landscaping requirements for the Application. The mitigation trees must be planted on the Property, in locations shown on the approved Preliminary/Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

Transportation

Existing Frontage Improvements

13. The Applicant must provide 98 feet of dedication from the centerline of the existing right-of-way for MD 355 to provide a 150-foot right-of-way and show it on the record plat(s).
14. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a 6-foot wide sidewalk along the property frontage on Public Street 'A' and MD 355 and a 5-foot wide sidewalk along the property frontage on Cider Barrel Drive.
15. Prior to the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDSHA to ensure construction of a 16-foot wide shared use path (breezeway) along the property frontage on MD 355.

New Streets

16. The Applicant must dedicate the rights-of-way and ensure construction of all necessary road improvements for the following public streets, as shown on the Preliminary Plan, to the design standards imposed by all applicable road codes. Only those roads [or portions thereof] expressly designated on the Preliminary Plan, "To Be Constructed By _____" are excluded from this condition.
 - a) Public Street 'A', consistent with MC -2005.01 modified to include 6-foot wide sidewalks
 - b) Cider Barrel Drive, consistent with MC-2003.12

Record Plats

17. There shall be no clearing or grading of the site prior to recordation of plat(s).

Easements

18. The record plat must show necessary easements.

19. The record plat must reflect the following building restriction lines (BRL) as shown on the Certified Preliminary Plan:
- a) A tapered front BRL, 47 feet from the proposed right-of-way line for MD355 at the northern property line; and
 - b) 31 feet from the proposed right-of-way line for MD 355 at the southern property line.

Notes and Labels

20. The record plat must reflect all areas under common ownership.
21. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 (“Covenant”).

MPDU's

22. The final number of MPDUs as required by condition 1 above will be determined at the time of site plan approval.

Certified Preliminary Plan

23. The Applicant must include agency approval letters and Preliminary Plan Resolution on the approval or cover sheet(s).

24. The certified Preliminary Plan must contain the following note:

Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.

25. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a) Update the 10-foot-wide shared use path along the full frontage of Frederick Road to show the master planned 16-foot wide asphalt shared use path (breezeway) with a minimum 6-ft buffer from edge of pavement.
 - b) Clearly label and delineate the area of dedication, road centerline BRL along the frontage for Frederick Road.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and 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 4.98-acre Subject Property consists of part of a lot (Lot 79 on Record Plat 276) and three Parcels (P809 and P811 on Tax Map FU13, P888 on Tax Map EU63). The easternmost portion of the Property, part of P888, is zoned R-60/TDR-12 and the remainder of the Property is zoned CRT-0.75, C-0.75, R-0.50, H-40.

- a. *The block design is appropriate for the development or use contemplated*

The block design depicted on the Preliminary Plan is appropriate for the proposed commercial (laboratory) and residential development. Connecting the two existing termini (stubs) of Cider Barrel Drive and the introduction of Public Street 'A' create a T-shaped grid, resulting in three adequately sized lots for the three proposed buildings, taking into consideration the scale of the development and the current CRT zoning.

- b. *The lot design is appropriate for the development or use contemplated*

The block design results in three separate lots with frontage on public roads. As intended by the CRT zone, each lot provides enough space for the new buildings, a pedestrian friendly street scape and adequate vehicular access.

- c. *The Preliminary Plan provides for required public sites and adequate open areas*

The lots were reviewed for compliance with Section 50.4.3.D, "Public Sites and Adequate Public Facilities," of the Subdivision Code. The Preliminary Plan provides adequate open areas for amenities, recreation, and stormwater management.

There are no Master Plan recommendations for public facilities or local recreation requirements for the Subject Property.

d. The Lots and Use comply with the basic requirements of Chapter 59

The lots were reviewed for compliance with the dimensional requirements for the CRT zone as specified in the Zoning Ordinance. This review does not include standards for the R-60/TDR-12 portion of the Property because it is predominately stream valley buffer and no buildings are proposed in that zone. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in CRT zone. A detailed summary of this review is included in Table 1, below.

Table 1:		
Zone : CRT-0.75, C-0.75, R-0.5, H-40 (Standard Method of Development)		
	Required	Proposed
1. Site		
Public Open space, tract > 10,000 SF	10% (16,850)	12.4% (20,973 SF)
2. Lot and Density		
Lot (min)		
Total Lot area (Site Area)		168,503 SF (3.87 AC)
Lot A (W of Cider Barrel)	n/a	95,894 SF (2.20 AC)
Lot B (North of WW)		25,900 SF (0.60 AC)
Lot C (south of WW)		46,709 SF (1.07 AC)
Density (max)		
TRACT AREA (CRT & R-60/TDR-12)	235,835 SF (5.41 AC)	
Part of Lot 79 (Tax Map FU13)	6,136 SF (0.14 AC)	
Parcel 809 (Tax Map FU13)	30,590 SF (0.70 AC)	
Parcel 811 (Tax Map FU13)	43,559 SF (1.0 AC)	
Parcel 888 Total (Tax Map EU63)		
Parcel 888 (CRT zone)	101,878 SF (2.34 AC)	
Parcel 888 (R-60/TDR12 zone)	34,786 SF (0.80 AC)*	
Previous dedication for MD-355	18,887 SF (0.43 AC)	
TRACT AREA FOR DENSITY PURPOSES (CRT)	201,049 SF (4.62 AC)	
* 0.80 acres zoned R-60/TDR12 is not included in the tract area for density calculations		
PROPOSED DEDICATION		
Cider Barrel Drive	14,716 SF (0.338 AC)	
MD-355	15,449 SF (0.355 AC)	

Public Street 'A'	18,281 SF (0.420 AC)	
PROPOSED DEDICATION (TOTAL)	48,446 SF (1.11 AC)	
Base Density		
Commercial	0.25 FAR (50,262 SF)	0.23 FAR (47,887 SF)
Residential	0.50 FAR (100,525 SF)	0.50 FAR (100,525 SF)
Total	0.75 (150,786 SF)	0.73 (148,412 SF)
Moderately Priced Dwelling Units		
	12.5% Min.	25%
MPDU Bonus Density (59.4.5.2.c)		
Total Bonus Density	35% max.	35% (35,184 SF)
Providing over 12.5% MPDU'S		30% (30,157 SF)
Plus 0.1% for each 0.1% increase in MPDU's above 20%		5% (5,026 SF)
Adjusted Density with MPDU Bonus		
Commercial		0.23 FAR (47,887 SF)
Residential		0.67 FAR (135,709 SF)
Total		0.90 (183,596 SF)
3. Placement		
Building A - Principal Building Setbacks (min)		
Front setback (Cider Barrel Drive)	0'	11'
Side setback, abutting Residential Detached, or Residential Townhouse zones	1.5 x 8' (R-60)	
North	12'	15'
South	12'	57'
Rear setback, Residential Detached, or Residential Townhouse zones	1.5 * 20' (R-60)	
West	30'	34'
Building B - Principal Building Setbacks (min)		

Front setback (MD 355)	0'	43'
Front setback (Public Street A)	0'	5'
Side setback, abutting Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zones (North)	1.5*8' (R-60) 12'	12'
Rear setback, abutting Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zones (West)	1.5*8' (R-60 HOA Parcel) 20'	30'
Building C - Principal Building Setbacks (min)		
Front setback (MD 355)	0'	32'
Side street setback (Public Street A)	0'	5'
Side street setback (Cider Barrel Drive)	0'	20'
Side setback, abutting Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zones (South)	1.5*8 (R-60) 12'	12'
4. Height		
Height (max)		
Principal building	40'	40'

The exact building location, setbacks and additional requirements of the zone will be determined at site plan. The Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan.

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

The Preliminary Plan substantially conforms to the 2009 *Germantown Employment Area Sector Plan*. The Subject Property is in the Montgomery College District identified in the Sector Plan.

Land Use

The Sector Plan has no specific recommendations for this Property. However, the Sector Plan does provide the following general land use recommendations for properties in this District, regarding their relationship, compatibility and connectivity with Montgomery College Campus:

Provide a network of streets with extensive pedestrian connections that create a walkable area.

The Application completes a network of streets which included completion of Cider Barrel Drive and a new public street, connecting to MD 355, listed as public street "A". Sidewalks are provided along Cider Barrel Drive and Public Street "A" and a 16-ft wide Shared Use Path along MD 355.

Use building placement and site design to create smaller usable outdoor spaces characteristic of urban areas.

The placement and orientation of the three buildings creates a smaller pedestrian scaled open space at the intersection of Cider Barrel Drive and Public Street "A".

Incorporate structured parking into buildings where feasible and pave surface parking areas with permeable materials.

All three buildings provide structured parking that have been incorporated into the building design.

Buildings must have a minimum of three stories where feasible with floorplates no greater than 25,000 square feet for non-residential uses. Medical facilities such as hospitals are exempt from this guideline.

As envisioned by the Sector Plan, all three buildings are three stories or greater (3, 3, and 4) and the commercial building (Building "C") has a floorplate less than 25,000 square feet.

The commercial building (Building "C") is envisioned as lab/research space which at some point in the future could provide ancillary lab space or be tied to the college's programing. Given the Subject Property's close proximity to the college, the new apartment buildings (A&B) provide additional housing opportunities for college students and faculty.

Transportation

Trail Connection

The Sector Plan envisions a connection from the Fredrick Road corridor in the east to Montgomery College and Observation Drive to the west. As the last remaining property for redevelopment in this section of Frederick Road, this Application represents the best opportunity to achieve this connection in the near term. A full vehicular connection was explored but deemed infeasible due to the extensive environmentally sensitive areas and steep grades surrounding Gunners Branch creek. Additionally, concern over a full vehicular connection was expressed by Montgomery College representatives, whose approval is

required to extend any connection onto the college campus. Instead, Staff has worked with the Applicant, Montgomery College, and the Montgomery County Department of Environmental Protection (MCDEP) on a pedestrian trail alternative. As conditioned, the trail would cross Gunner's Branch via an existing earthen berm as part of a stormwater management facility under the control of the MCDEP. The trail would then connect to the pedestrian facilities affiliated with the easternmost parking lot on the Montgomery College campus. This option was preferred as opposed to a connection at the rear of the Subject Property as it avoids existing environmental easements, doesn't require a new stream crossing, and would take advantage of a reduced grade offered by the existing berm. A paved, ADA compliant alternative was explored; however, due to the abrupt 40 ft grade change west of the stormwater facility, resulting engineering challenges, and concern voiced by Montgomery College that the trail could restrict development potential and near-term programming on the campus, a natural surface for the trail is being pursued and conditioned for this Application. As conditioned, the final alignment and design of the trail will be determined prior to the use and occupancy permit for the first building and must be approved by Montgomery College and the MCDEP.

As approved, this Preliminary Plan achieves the District wide goals and substantially conforms to the Sector Plan recommendations.

Noise Guidelines

The Environmental section of the 1993 *General Plan Refinement for Montgomery County* contains multiple objectives directing Staff to protect future residents and workers from unacceptable noise levels. The 1983 Staff Guidelines for the Consideration of Transportation Noise ("Noise Guidelines") contain strategies for mitigating the impact of transportation noise on new residential development. The Noise Guidelines map has the Subject Property in the 60 dBA Ldn guideline area.

Phoenix Noise & Vibration, LLC prepared a report on June 18, 2020 with findings from an analysis of transportation related noise impacts from MD 355 on the Property. Under normal circumstances, the Applicant provides a noise study that includes on-site noise measurements taken at the Property. The noise study provided for this Application includes the results of a computer model that utilized the most recent data published by the Maryland Department of Transportation State Highway Administration (MDOT SHA) along with projected conditions on-site based on the proposed development's topography and building locations. Due to efforts to limit the spread of the Coronavirus (COVID-19) and the resulting atypical traffic volumes due to stay at home orders, business closures, limitations on non-essential travel, increased teleworking, and remote learning for schools, the provided noise analysis includes results from the

computer modelling only. Measurements taken at the Property during this time would not yield realistic data for this analysis. Once the typical traffic patterns resume, on-site measurements of traffic related noise may be taken and included in this analysis.

The computer modeling indicates that two of the five proposed public outdoor spaces will be impacted by noise levels above 60 dBA Ldn. These areas are located on the east side of proposed Buildings B and C, adjacent to MD 355. Noise levels in the other three proposed outdoor open space areas will have noise levels below 60 dBA Ldn. Mitigation measures such as a berm or barrier could be constructed to alleviate the noise impacts in the two areas closest to MD 355; however, since there are three additional areas available for residents to enjoy open space that are not impacted by excessive noise levels, Staff is not recommending construction of a berm or barrier along MD 355.

The Noise Analysis identified future noise levels of 65 dBA Ldn and up to 70 dBA Ldn in some units of proposed multi-family Building B. The affected units, on the eastern, northern, and southern elevations of this building will require building construction modifications to maintain interior noise levels below the recommended 45 Ldn. Building construction modifications may include upgraded windows and/or doors. The other proposed residential building, Building A, will not be impacted by noise levels in excess of 60 dBA Ldn and will not require any mitigating measures.

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

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the development proposed by this Preliminary Plan.

i. Proposed public transportation infrastructure

The Applicant is dedicating the necessary amount of right-of-way for the construction and maintenance of Cider Barrel Drive and Public Street 'A'. However, the Applicant is requesting a narrower than standard right-of-way for MD 355, as discussed in detail below.

All new roads will be dedicated for public use. Improvement of the Subject Property will complete the connection of Cider Barrel Drive from north to south, crossing the Subject Property roughly mid-way; it will be constructed to a primary residential street standard with a 70-ft ROW with 5-foot-wide sidewalks on either side. Public Street A will add an additional link as recommended in the Master Plan of Highways and Transitways from Cider

Barrel Drive to Frederick Road, expanding on the existing street grid along this corridor. Street A will be constructed as a Business District Street with 2 travel lanes with parking on the north side and 6-foot-wide sidewalks. The intersection with Frederick Road will be constructed as a restricted right-in-right-out condition.

b. MD 355 Right-of-way

The Subject Property has approximately 339 feet of frontage on MD 355, which is classified by the Sector Plan and 2018 *Master Plan of Highways and Transitways* as a 6-lane Major Highway with planned Bus Rapid Transit (BRT) and an ultimate right-of-way (ROW) width of 250 feet (125 feet from the road center line). The Applicant is requesting that dedication be reduced to 98 feet from the road centerline, instead of 125 feet from the road centerline, providing for a 150 feet ultimate ROW width.

Section 50.4.3.E.2.a.i gives the Planning Board the authority to approve a narrower than standard right-of-way after making the additional findings discussed below. M-NCPPC Staff and MCDOT support the Applicant's proposal based on the existing and planned improvements in the section of the Property's frontage on MD 355.

The Applicant's request to reduce the right-of-way dedication for MD 355 improves compatibility with the adjoining existing developments and makes the best use of the Subject Property's frontage on MD 355, which is allowed per Section 50.4.3.E.2.a.i of the Subdivision Regulations.

In the Planning Board's review of a preliminary plan and record plat, Subdivision Regulation Section 50.4.3.D - *Public sites and adequate open spaces*, a preliminary plan must provide for required public sites and adequate open space areas. Section 50.4.3.D.3 instructs the Board to require dedication to public use of roads as part of the subdivision process. Section 50.4.3.E.2., Road Design Standards, states:

Design standards.

- a. *Right-of-way.* Area for a road on a subdivision plan must include the full width of all rights-of-way recommended for the applicable road classification in the adopted master plan and in the Road Design and Construction Code.
 - i. *The Board may approve a narrower than standard road right-of-way if it meets minimum fire access requirements and the Board finds that a narrower right-of-way is environmentally preferable, improves*

compatibility with adjoining properties, or allows better use of the tract under consideration.

- ii. In determining the width of a less than standard right-of-way, the Board must consider:*
 - (a) the recommendations of the Department of Transportation or other applicable state or municipality transportation permitting agency;*
 - (b) the amount of traffic expected to use the proposed roads;*
 - (c) the maximum road right-of-way or improvement required for the proposed land use; and*
 - (d) the increased traffic, travel lane, and right-of-way requirements that would be created by maximum use and development of land using the road.*

In their letter dated September 25, 2020, MCDOT stated that, in consultation with MCDOT Transit staff, they support the requested, narrower ROW for MD 355. The Application has also been reviewed by the MCDPS, Fire Department Access and Water Supply Section, which determined that access to the Property (with the reduced ROW) meets fire access requirements.

The Applicant's justification letter explains that the reduction of ROW will allow for better use of the tract under consideration and improve compatibility with the existing residential development. Following a thorough review of the Application, Planning Staff supports the Applicant's request. The buildable area of the Property is constrained due to the narrow geometry of the Subject Property, required setbacks and right-of-way dedication for two master planned street connections – Cider Barrel Drive and Public Street A. The requested reduction in ROW for MD 355 allows for the best use of the land along the frontage of the Property results in the most compatible development. The narrower right-of-way allows the Applicant to utilize a larger area of the Property's frontage to provides public open space, landscaping and stormwater management, which helps tie the new buildings into the surrounding development.

Providing the full additional dedication of 125 feet from the centerline of MD 355 would have a detrimental effect on the economic feasibility to construct buildings within the remaining buildable area. Additionally, the building faces would no longer align with the existing building face found along this stretch of road.

In lieu of full dedication, the Applicant is providing a building restriction line (BRL) along the frontage which sets back building placement from the road and aligns them with abutting structures to the north and south. The BRL is located in excess of 125 feet from the centerline of the road and will provide a minimum

of 182 feet of clearance between the proposed buildings (including ESD facilities) and the opposite right-of-way line. Further, clearance from the proposed buildings and the face of the existing townhouses on the opposite (east) side of MD 355 will be a minimum of 200 feet. If in the unlikely case additional ROW in excess of 150 feet is needed for temporary or permanent road improvements, the BRL provides for more available and unencumbered land than the proposed dedication alone would provide. As detailed below, all planned road and transit facilities can be accommodated in the proposed ROW area. As proposed, future ROW provides an interim open space area, with seating, landscaping (both stormwater features and ornamental planting), and a sidewalk linking the development to the existing neighborhoods. It will also connect the development to the 16-foot-wide master-planned shared use path (referred to as breezeway) being constructed by the Applicant. The reduction in right of way will not impede fire access; all future travel lanes of MD 355 will continue to accommodate emergency vehicle movement.

c. Future MD 355 BRT Cross Section

Based on the current MCDOT BRT Corridor Alternative Phase 2 Study, Alternative C for Segment 7 is the only BRT alignment that would utilize the ROW along the Property's frontage. As depicted in Figure 23 of the Staff Report, the planned public improvements can be easily accommodated within the proposed 150-foot-wide ROW for a currently proposed mixed-traffic (e.g., no dedicated transit lane) operation. The proposed dedication area has been reviewed and approved by MCDOT transit planning staff.

However, the proposed ROW should nevertheless accommodate the potential for an ultimate master-planned vision for MD 355 as a 6-lane highway with median running BRT. This will require at a minimum the addition of a roughly 50-ft wide bidirectional BRT transitway and additional 11-ft wide travel lane. As a point of comparison, similar facilities are envisioned under Alternative B of the Study can be fully accommodated within this proposed 150 ft. ROW.

While the provided dedication is significantly less than the ultimate Master Plan recommendation for 250 feet, all potential public facilities can be accommodated without restriction – there will be no foreseeable detrimental impact to the implementation on future facilities.

While short of the full recommended ROW, this Application, by matching the existing ROW dedication and building face on Frederick Road will not preclude implementation of any planned future facilities. Taken together, this ROW dedication and building restriction line the Application substantially conforms to the goals of the Master Plan of Highways and Transitways.

d. Pedestrian and Bicycle Infrastructure

The 2018 *Bicycle Master Plan* recommends that the west side of Frederick Road carry the Clarksburg to City of Gaithersburg Breezeway, a high-capacity, high-functioning bikeway to run through this corridor. As conditioned, a 16-foot wide asphalt shared-use path will be constructed along the frontage of the Subject Property, connecting to an existing shared use path running to the north, to accommodate the breezeway to be used by both pedestrians and cyclists.

As conditioned, a signal is to be constructed by the Applicant to address safety concerns at the Oxbridge Dr. – Frederick Road intersection to the north of the Subject Property. This will additionally facilitate safe pedestrian crossing of Frederick Road, which at present lacks a marked or signalized crosswalk in the roughly one-mile stretch between Germantown Road and Middlebrook Road.

As mentioned, a natural surface trail will be constructed by the Applicant to connect the Frederick Road corridor to the east to Montgomery College to the west, with the path itself to be constructed off-site to the south of the Subject Property. This is to accommodate the desire for a transportation connection envisioned by the Sector Plan.

e. Local Area Transportation Review (LATR)

This mixed-use plan for 142 multifamily dwelling units, 15,000 sq. ft. of office and 32,887 sq. ft. of R&D office use will generate 128 person trips during the AM weekday peak period and 163 person trips during the PM weekday peak period based on the trip generation rates as calculated using the 10th Edition ITE Trip Generation Manual and adjusted as detailed in the 2017 LATR guidelines. Because the Application generates over 50 peak hour person trips, a traffic study was required for Local Area Transportation Review. This study is summarized below in Table 2.

Table 2 - Trip Generation

Development	Measure	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Existing Misc. Use (credit)	driveway count	(4)	(3)	(7)	(3)	(3)	(6)
Multifamily	142 Units	11	35	46	36	23	59
Office	15,000 sf	33	6	39	3	15	18

R&D Office	32,887 sf	10	3	13	5	29	34
Net New Vehicle Trips	–	50	41	91	41	64	105
Net New Person Trips	–			128			163

Trip generation rates are based on the ITE Trip Generation Manual, 10th Edition and adjusted as detailed in the 2017 LATR guidelines.

Seven intersections were studied using the CLV congestion methodology, with two intersections – Frederick Road / Germantown Road and Frederick Road / Middlebrook Road (in Italics) exceeding the Germantown East policy area CLV standard of 1425.

Table 3 - Intersection CLV Counts

Intersection	Existing Conditions		Background Conditions		Total Future Conditions	
	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour
Germantown Road & Cider Barrel Drive	588	673	774	931	793	966
<i>Frederick Road & Germantown Road</i>	1221	1583	1473	1871	1483	1880
Frederick Road & Oxbridge Drive	1010	1195	1107	1290	1137	1290
Frederick Road & Site Driveway	672	1075	728	1170	749	1198
Frederick Road & Cider Press Place	700	1094	756	1190	767	1205
<i>Frederick Road & Middlebrook Road</i>	1087	1392	1208	1532	1213	1540
Cider Barrel Drive & Site Driveway	--	--	--	--	65	84

These two intersections were additionally analyzed using the HCM methodology to measure delay and the efficacy of signal timing improvements. These signal timing improvements have been reviewed and approved by MCDOT and SHA. While the signal timing improvements do not reduce delay below the 51 second standard for the Germantown East policy area, they do reduce the delay to below

background conditions – e.g., they fully mitigate delay caused by this Application, as acceptable according to the LATR guidelines.

Table 4 - Intersection HCM Counts with Proposed Signal Timing Improvements

Intersection	Existing Conditions		Background Conditions		Total Future Conditions	
	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour	AM Peak Hour	PM Peak Hour
Frederick Road & Germantown Road	50.1	102.3	70.3	82.2	71.5	83.3
With signal optimization	--	--	--	--	61.7	71.0
Frederick Road & Middlebrook Road	69.2	74.0	72.8	92.3	73.1	93.8
With signal optimization	--	--	--	--	68.0	90.1

f. Signal Warrant

A peak-hour signal warrant analysis was conducted on two unsignalized full-movement intersections: Germantown Road / Cider Barrel Drive and Frederick Road/ Oxbridge Drive. Both intersections meet warrants under both existing and future conditions and require mitigation to address safety concerns.

Table 5 - Peak Hour Signal Warrant Analysis

Intersection	Peak Hour	Existing Conditions			Total Future Conditions		
		Major Volume	Minor Volume	Warrant Met?	Major Volume	Minor Volume	Warrant Met?
Germantown Road & Cider Barrel Drive	AM	2683	81	Yes	2711	100	Yes
	PM	2909	67	No	2931	105	Yes
Frederick Road & Oxbridge Drive	AM	3095	91	Yes	3134	91	Yes
	PM	3947	66	No	3974	66	No

These warrants constitute significant safety concerns for both intersections, particularly for vehicles making through and left-turn movements from the minor streets onto multi-lane highways with 40 mph speed limits. It is recognized that these intersections are in need of improvement even under current conditions – the current vehicular flow warrants full signalization – and

that vehicular trip generation from this Application only amounts to a fraction of total future trips. However, given the safety concern, improvements to these intersections have been conditioned as part of the approval of this Application and are required to meet the finding for Adequate Public Facilities. These improvements, as stated in the conditions, are a change in geometry of the Germantown Road & Cider Barrel Drive intersection to a channelized right-in, right-out condition (restricting through and left-turn movements) and the signalization of the Frederick Road & Oxbridge Drive intersection.

g. School Adequacy Analysis

Overview and Applicable School Test

Preliminary Plan No. 120200170, College View Campus was heard by the Planning Board on October 8, 2020. Therefore, the FY21 Annual School Test, approved by the Planning Board on June 25, 2020 and effective July 1, 2020 is applicable. The Application proposes development of 142 multi-family low to mid-rise units.

Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the Upcounty region of the County.

Table 6 – Per Unit Student Generation Rates – Upcounty Region

	Elementary School	Middle School	High School
SF Detached	0.210	0.120	0.169
SF Attached	0.248	0.121	0.157
MF Low-Rise	0.183	0.077	0.093
MF High-Rise	0.020	0.008	0.010

With a net of 142 multi-family low-rise units, the proposed project is estimated to generate the following number of students:

Table 7 – Student Projections

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generate	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
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Multi-Family Low to Mid Rise	142	0.183	25.986	0.077	10.934	0.093	13.206
TOTALS	142		25		10		13

On average, this project is estimated to generate 25 new elementary school students, 10 new middle school students, and 13 new high school students.

Cluster Adequacy Test

The project is located in the Clarksburg High School Cluster. The student enrollment and capacity projections from the FY21 Annual School Test for the cluster are noted in the following table:

Table 8 – Cluster Projections

School Level	Projected Cluster Totals, September 2025			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	3,857	4,056	95.1%	1,011	25
Middle	1,629	1,668	97.7%	372	10
High	2,410	2,034	118.5%	30	13

The Moratorium Threshold identified in the table is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. As indicated in the last column, the estimated enrollment impacts of this Application fall **below** the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the cluster level to accommodate the estimated number of students generated by this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Fox Chapel ES and Rocky Hill MS, respectively. Based on the FY21 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 9 – Projected totals

School	Projected School Totals, September 2025				Moratorium Threshold	Estimated App. Impact
	Enrollment	Prog. Capacity	% Utilization	Surplus/ Deficit		

Fox Chapel ES	620	683	90.8%	+63	200	25
Rocky Hill MS	1,035	1,020	101.5%	-15	190	10

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the numbers of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and the seat deficit threshold. As indicated in the last column, the estimated enrollment impacts of this Application fall below the moratorium thresholds for both Fox Chapel ES and Rocky Hill MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of elementary and middle school students generated by this project.

Analysis Conclusion

Based on the school cluster and individual school capacity analysis performed, using the FY2021 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this Application.

h. Other Public Facilities and Services

The Subject Property is in sewer category S-1 and water category W-1, respectively, which is consistent with the Applicant's proposal to connect to public water and sewer which are available and adequate to serve the development. The Applicant is extending the existing 8" water line and 12" sewer line from the WSSC easement, south of the Subject Property at the terminus of Gunners Terrace (west of Cider Barrel Drive). The new water lines will be installed within the proposed right-of-way for Cider barrel Drive and Public Street A, with service lines connecting to each of the new buildings. The existing electrical service provided by PEPCO will be upgraded to serve the proposed buildings.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section, which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated June 2, 2020. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the 2016-2020 Subdivision Staging Policy.

2. Adequate Public Facility Validity Extension Request

The Applicant requested an extended Adequate Public Facilities Validity period for 7 years (84 months) instead of the typical 5 years (60 months).

Under Section 50.4.3.J.5.iv, an Adequate Public Facilities determination shall be valid “for no less than 5 and no more than 10 years after the preliminary plan is approved, as determined by the Board when it approved the plan, for any plan approved after July 31, 2007, and before April 1, 2009, or after March 31, 2017.” As such, the Applicant’s request is within the allowable validity time period under the Subdivision Regulations.

The Subdivision Regulation continues under Section 50.4.3.5.b:

“If an applicant requests a longer validity period than the minimum specified in 5.a, the applicant must submit a development schedule or phasing plan for completion of the project in the Board for its approval.

- i. At a minimum, the proposed development schedule or phasing plan must show the minimum percentage of the project that the applicant expects to complete in the first 5 or 7 years, where is the applicable minimum, after the preliminary plan is approved.*

The phasing plan indicates that Phase I will be completed within the first 5 years, with includes construction of up to 50 dwelling units, both roads, the 16-foot breezeway, the natural surface trail connecting to Montgomery College. The second residential building, commercial building and the transportation improvements, will be completed within the next two phases, as specified below, in Table 10.

Table 10 – Adequate Public Facilities Phasing

Phase	Benchmark (See Conditions of Approval for triggers)	Duration
Phase I	Construct 50 Multi-family Units (Building A or B). <ul style="list-style-type: none"> • Construct the extension of Cider Barrel Drive and Public Street A to approved public street standards. • Construct a natural surface trail as approved by M-NCPPC Staff, Montgomery College, and the MCDEP • Construct a 16-ft wide asphalt shared use 	60 months (5 years)

	path with a minimum 6-ft buffer from edge of pavement along the full frontage of MD 355.	
Phase II	Construct 92 additional multi-family units for a total of 142 units (Building A or B) <ul style="list-style-type: none"> • Install a traffic signal at the intersection of Oxbridge Drive and MD 355. • Improve the southern leg of the Cider Barrel Dr. and MD-118 intersection to a right-in, right-out condition. • Conduct signal optimization to reduce the average delay at the intersections of Middlebrook Road/MD 355 and MD 118/MD 355 as approved by staff from the MCDOT and SHA. 	12 months (72 months cumulative)
Phase III	Construct 47,887 square feet of Commercial (Building C).	12 months (84 months cumulative)

- ii. *To allow a validity period longer than the specified minimum, the Board must find that the size or complexity of the subdivision warrant the extended validity period and would not be adverse to the public interest. The Board must condition a validity period longer than the specified minimum on adherence to the proposed development schedule or phasing plan and may impose other improvements or mitigation conditions if those conditions are needed to assure adequate levels of transportation or school service during the validity period.*

The Planning Board approved the Applicant’s request for two additional years of APF validity, to complete construction of proposed development. Due to the scope of off-site transportation improvements, including signalization of an existing intersection, installation of a “pork-chop” to improve vehicle turning conditions and signal optimization, all of which will take detailed coordination, planning and substantial financial contributions by the Applicant. Considering the scope of the required improvements, Staff believes the two additional years of APF validity requested by the Applicant is reasonable.

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

Environmental Guidelines

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420200170 for the Property was approved on September 3, 2019. The NRI/FSD identifies the environmental features and forest resources on the Property. The Property contains approximately 0.79 acres of forest, including approximately 0.45 acres of forested stream valley buffer. There is one perennial stream that enters the Property from the south, through an outfall of an existing stormwater management pond, flows in a northern direction through the Property and continues off-site. The Property contains approximately 0.10 acres of forested wetlands, 0.55 acres of 100-year floodplain, and there are highly erodible soils and slopes greater than 25 percent present. There are 16 trees greater than or equal to 24" Diameter at Breast Height (DBH) that were identified on or adjacent to the Subject Property, three of which are 30" DBH and greater.

Stream Buffer Encroachment

The Application is subject to the *Guidelines for Environmental Management of Development in Montgomery County* (January 2000) ("Environmental Guidelines"), which includes guidance for the protection of streams and their buffers. Section IV-A1 of the Environmental Guidelines allows for some encroachments within the stream buffer under certain circumstances, and when determined by staff that there are no reasonable alternatives and the impacts have been minimized as much as possible. The Application proposes to impact the stream buffer to install a storm drain outfall that extends off-site, out falling into an existing stormwater management pond located on the adjacent property to the south. The impacts have been minimized to the greatest extent possible and are unavoidable due to the location of the existing stormwater management pond.

A. Forest Conservation

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

The Application meets the requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The Preliminary Plan and Site Plan reviews occurred concurrently, so the Forest Conservation Plan was submitted and reviewed as a combined Preliminary and Final Forest Conservation Plan. The net tract area for forest conservation is 5.27 acres, which includes the 4.98-acre Property and 0.29 acres of offsite disturbance for required utility connections, a stormwater management outfall, and connections to Cider Barrel Drive. The FCP includes 0.79 acres of existing forest located on the west side of the Property and along the northern property line. The Application proposes to retain 0.45 acres and remove 0.34 acres of forest. The

proposed forest clearing generates a reforestation requirement of 0.68 acres. The Applicant proposes to meet the planting requirement by reforesting 0.22 acres on-site within the unforested portion of the stream buffer and the remaining 0.46 acres off-site, such as at an M-NCPPC approved forest bank. The on-site retained and planted forest will be protected in a Category I conservation easement.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to three Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Protected Trees are located within and immediately adjacent to the Property. Tree ST-1 is located within the public right-of-way along Frederick Road with proposed impacts due to the required construction of a public sidewalk that connects to an existing sidewalk. If the impacts to the critical root zone of ST-1 were not permitted, the proposed sidewalk connection could not be made. Tree ST-5 is located adjacent to the planned extension of Cider Barrel Drive through the Property. Existing Cider Barrel Drive dead ends at both the northern and southern property boundaries, which has pre-determined the alignment through the Property. If the impacts to the critical root zone and resulting removal of Tree ST-5 were not permitted, the connection and completion of Cider Barrel Drive could not be accomplished. Tree ST-16 is located off-site on the adjacent property to the north. This tree will be impacted by the proposed development of a residential building. The Property is narrow in shape, with a stream buffer and the pre-determined alignment of Cider Barrel Drive through the Property dictating land available for the development envelope. If the impacts to the critical root zone and removal of Tree ST-16 were not permitted, the full development potential of this CRT-zoned property could not be achieved. These existing conditions are such that any application to develop this Property for the recommended use and density would result in the need for a tree variance. Staff worked

with the Applicant to revise the limits of disturbance to minimize the impacts to the Protected Trees as much as possible. The number and location of the Protected Trees within the developable portions of the Property, and the development requirements create an unwarranted hardship. If the variance were not considered, the development anticipated on this Property would not occur. The Planning Board has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not considered.

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

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

Granting the variance does not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property. Protected Trees are located in the developable area of the Property. The requested removal of and impacts to Protected Trees are due to required road and sidewalk connections, and disturbance within the anticipated developable area of the site that would be necessary under any application for development of the Property. Any development considered for this Property would be faced with the same considerations. Granting a variance to allow land disturbance within the developable portion of the Property is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing Property conditions, including the location of the Protected Trees within the developable area and required infrastructure improvements.

- 3. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for a variance is a result of the existing conditions and the design and layout of the Property, and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance does not violate State water quality standards or cause measurable degradation in water quality. Onsite mitigation for the removal of the Protected Trees will ultimately replace the functions currently provided by the Protected Trees to be removed. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated August 7, 2020.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. This Application removes approximately 99.6 inches in DBH, resulting in a mitigation requirement of 25 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. The FCP includes the planting of nine 3-inch caliper, native, canopy trees on the Property as mitigation for the removal of the two variance trees. No mitigation is required for Protected Trees impacted but retained.

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

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards. The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Section on August 7th, 2020. The Application will meet stormwater management goals through a variety of techniques including a green roof, bioretention, modular wetland system – linear and structural treatment in an existing stormwater management pond.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is ~~NOV 04 2020~~ (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 Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, October 15, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
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