


**Shady Grove Station, Preliminary Plan No. 12012008B and Shady Grove Station, Westside Site Plan No. 82013022A**

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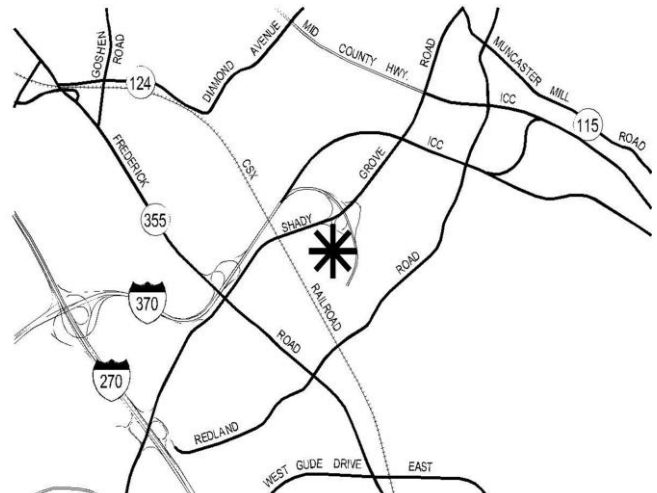
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**Completed: October 9, 2014**

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**Description**

- Request to modify the approved Preliminary Plan and Site Plan to reduce the residential alley pavement widths from 20 feet to 18 feet, installation of additional landscaping in alleys, adjustments to lot lines, and modification to the location of MPDUs and Workforce Housing units layout;
- Located south of the intersection of Shady Grove Road and Crabbs Branch Way between the CSX rail tracks and the Metro Station Access Road;
- TOMX-2/TDR Zone; approximately 90.34 acres; *Shady Grove Sector Plan*.
- Applicant: EYA/CSP Associates and Montgomery County;
- Filing Date: July 28, 2014.



**Summary**

- Staff recommends approval of the Preliminary Plan Amendment and Site Plan Amendment.
- The Planning Board previously approved Preliminary Plan No. 120120080, Shady Grove Station, by Resolution No. 12-89; Preliminary Plan Amendment No. 12012008A, Shady Grove Station by Resolution No. 14-22; and Site Plan No. 820130220, Shady Grove Station- Westside, by Resolution No. 13-190.
- Staff has received no correspondence from notified parties.

## **RECOMMENDATIONS AND CONDITIONS**

Staff recommends approval of Preliminary Plan Amendment No. 12012008B, Shady Grove Station and Site Plan Amendment No. 82013022A, Shady Grove Station-Westside. All site development elements submitted to M-NCPPC on October 1, 2014 are required.

### Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan No. 120120080 and Preliminary Plan No. 12012008A as listed in the Montgomery County Planning Board Resolutions No. 12-89 and No. 14-22, respectively.

### Site Plan Conformance

The development must comply with the conditions of the approval for Site Plan No. 820130220, Shady Grove Station-Westside as listed in the Montgomery County Planning Board Resolution No. 13-190.

### Certified Site Plan

Prior to the approval of the Certified Site Plan and subject to staff review and approval, the Applicant must:

- a. Ensure that the Department of Housing and Community Affairs (DHCA's) agreement-to-build reflects the proposed changes for Moderately Priced Dwelling Units (MPDUs) and Workforce Housing units.
- b. Include all elements of the proposed amendment on the cover sheet.

## SITE DESCRIPTION AND CONTEXT

Shady Grove Station, also called the Montgomery County Service Park redevelopment, is located south of Shady Grove Road, north of Redland Road, east of the CSX rail tracks, and west of the Metro Access Road. Crabbs Branch Way runs roughly north-south through the area creating two segments. The Shady Grove Sector Plan refers to the western segment of the property as Metro North-CSP and the eastern segment as Jeremiah Park. Shady Grove Station is in the Transit Oriented Mixed Use/Transferable Development Rights (TOMX-2/TDR zone).

To the north, the Grove Shopping Center is located in the northeast quadrant of Shady Grove Road and Crabbs Branch Way in the RMX-2C/TDR Zone, while the David F. Bone Equipment Maintenance and Transit Operations Center (EMTOC) is located west of the Grove Shopping Center in the I-3 Zone.



*Vicinity Map*

The Property is generally flat with the northern portion at slightly higher elevation. Large surface parking lots for Montgomery County Public Schools Bus Depot, Parks Department maintenance equipment facility, and low-level industrial buildings comprise the eastern portion of the Property. Most of the buildings on the western portion of Crabbs Branch Way have been demolished, with the exception of the Crabbs Branch Day Laborer Center.

## PROJECT DESCRIPTION

### Previous Approvals

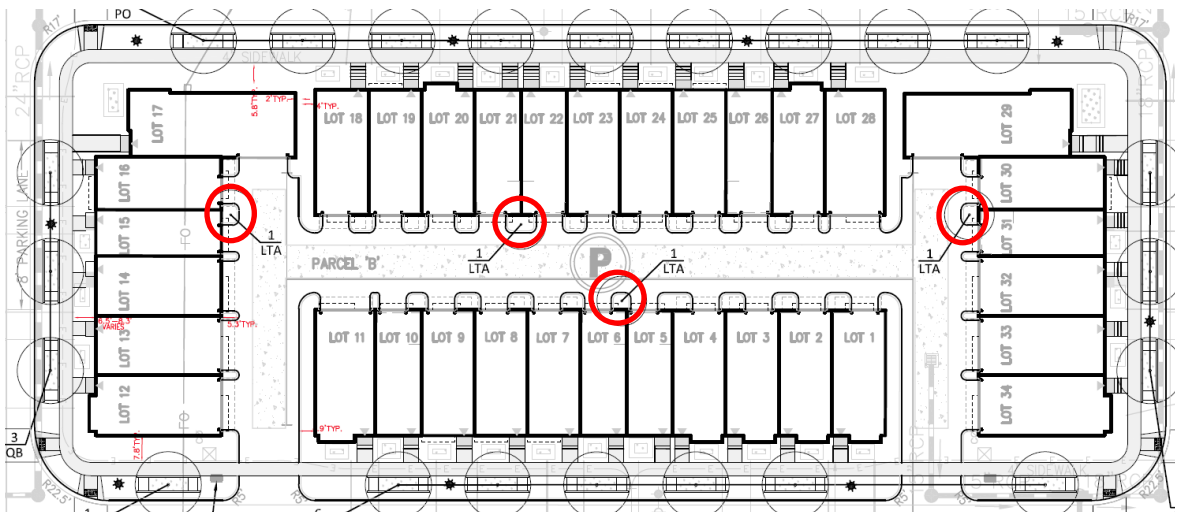
Previous Planning Board approvals for Shady Grove Station are:

- Preliminary Plan No. 120120080, Shady Grove Station, on September 11, 2012 for a maximum of 752 townhouse units on up to 752 lots; a maximum of 1,458 multi-family units on up to 95 lots, including 84 lots for 2-over-2 units and 11 lots for multi-family buildings; 41,828 square feet of retail space on up to 3 lots shared with multi-family units; and a maximum of 131,422 square feet of office development on 1 lot.
- Preliminary Plan Amendment No. 12012008A on April 23, 2014 that permitted the execution of the Traffic Mitigation Agreement (TMAg) at building permit and allowed modifications to the cross-section for Roads I and P.
- Site Plan No. 820130220, Shady Grove Station-Westside, on January 23, 2014 for up to 1,521 residential dwelling units, 41,828 square feet of retail, and space for a public library on approximately 41.8 gross acres.

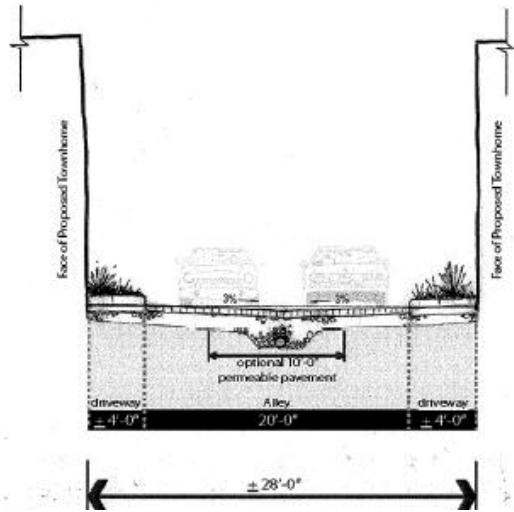
### Proposal and Background

The approved Preliminary Plan and Site Plan have residential alley pavement widths that are 20 feet. The Applicant is requesting the following modifications:

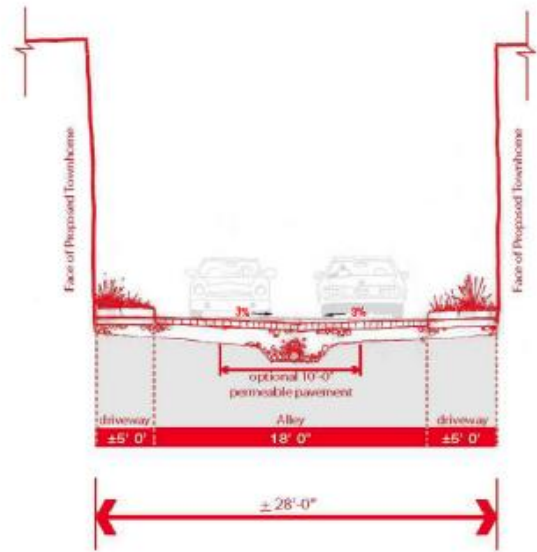
- Reduction of residential pavement alley widths from 20 feet to 18 feet. The wall-to-wall distance between the townhouses as shown on the approved plans will not change;
- Additional landscaping in the alleys and deeper decks for townhouses with a deck option;
- Adjustments to lot lines; and
- Changes in the location of MPDUs and Workforce Housing units. (The total number of MPDUs and workforce housing units will not change.)



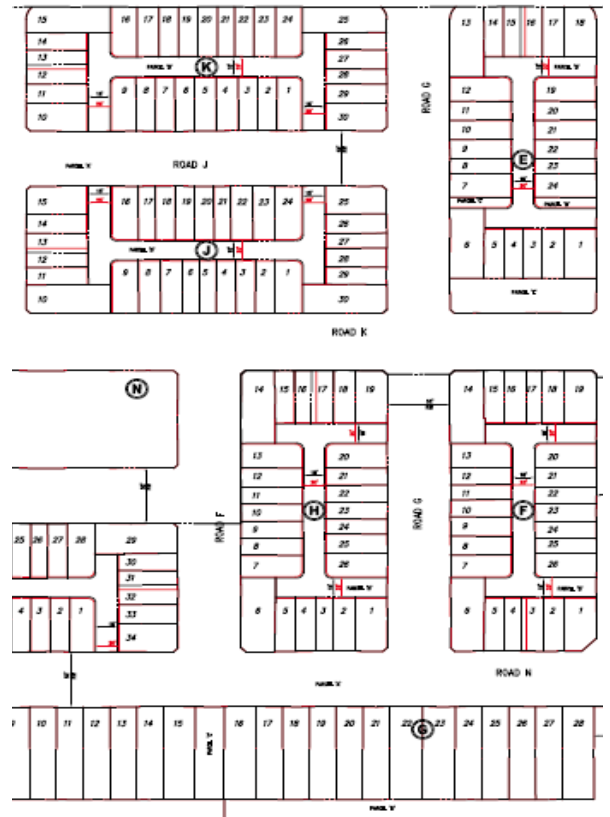
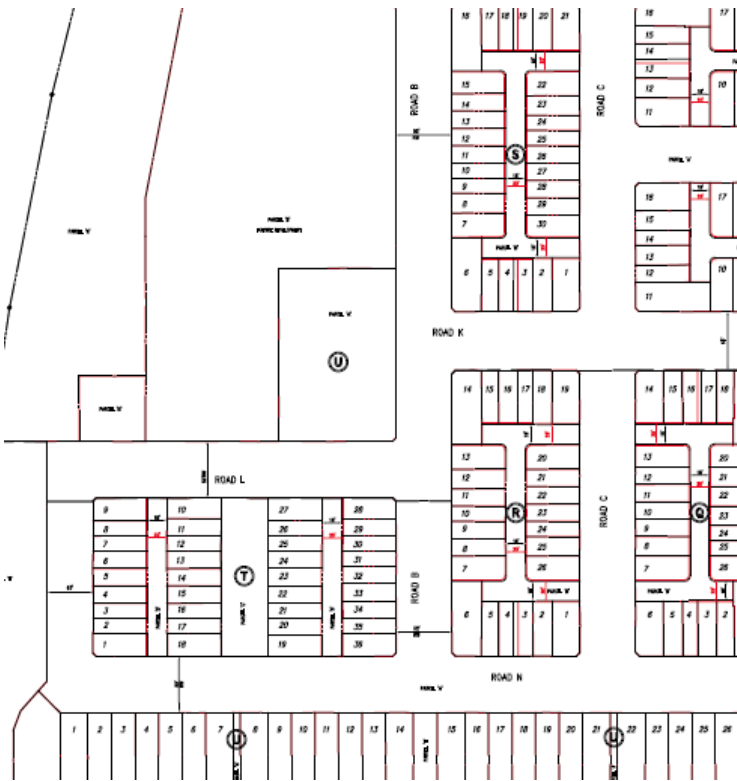
*Example of proposed additional landscaping, highlighted in red, for townhouse alleys.*



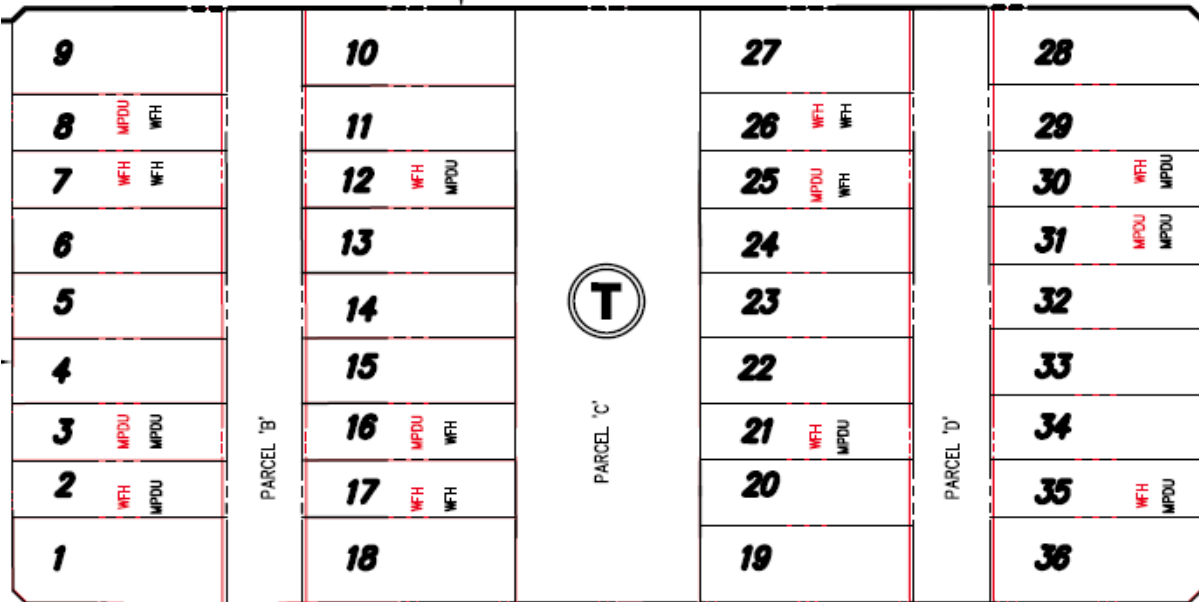
Approved Preliminary Plan and Site Plan residential alley pavement widths.



Proposed Preliminary Plan and Site Plan Amendments for residential alley pavement widths.



Lot line adjustments highlighted in red



*Sample illustration of approved MPDUs and Workforce Housing units (black); proposed changes to the location of MPDUs, Workforce Housing units and lot lines are shown in red.*

**ANALYSIS AND FINDINGS**

**Master Plan**

The proposed Preliminary Plan Amendment and Site Plan Amendment maintain conformance with the 2006 Shady Grove Sector Plan recommendations for the subject property as analyzed in the original Preliminary Plan No. 120120080 approved on September 11, 2012, and the original Site Plan No. 820130220 approved on February 3, 2014.

**Transportation and Circulation**

The proposed amendment does not affect vehicular, pedestrian or bicyclist circulation.

**Environment**

The proposed amendment maintains compliance with Chapter 22A regarding forest conservation.

**Development Standards**

The proposed amendment does not alter the development standards approved with the original Preliminary Plan No. 120120080 and Site Plan No. 820130220.

## **COMMUNITY OUTREACH**

The Applicant has met all the proper signage, noticing, and submission meeting requirements. Staff has received no correspondence on this Amendment.

## **CONCLUSION**

The proposed Preliminary Plan Amendment and Site Plan Amendment do not alter the overall design of the development in relation to the original approval, and the proposed project remains compatible with existing and proposed development adjacent to the site. All previous approvals remain in full force and effect, as modified by these Amendments.

## **APPENDIX**

- A. Preliminary Plan Resolution MCPB No. 12-89
- B. Preliminary Plan Amendment Resolution MCPB No. 14-22
- C. Site Plan Resolution MCPB No. 13-190



## ATTACHMENT A

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

MCPB No. 12-89  
Preliminary Plan No. 120120080  
Shady Grove Station  
Date of Hearing: September 6, 2012

SEP 11 2012

#### RESOLUTION

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

WHEREAS, on November 15, 2011, EYA/CSP Associates and Montgomery County, filed an application for approval of a preliminary plan of subdivision of property to create 752 townhouse lots, 1,458 multi-family residential units, 41,828 square feet of retail and 131,422 square feet of office development on 90.34 acres in the TOMX-2/TDR zone (the Property), located along Crabbs Branch Way, south of Shady Grove Road in the 2006 Shady Grove Sector Plan (Sector Plan or Plan) area; and

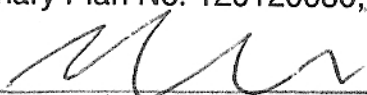
WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 1200120080, Shady Grove Station (Preliminary Plan or Application); and

WHEREAS, Planning Board staff (Staff) issued a memorandum to the Planning Board, July 13, 2012 and an addendum on August 24, 2012, setting forth its analysis and recommendation for approval, of the Application subject to certain conditions (Staff Report); and

WHEREAS, on September 6, 2012 the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 6, 2012, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Presley, seconded by Commissioner Dreyfuss, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120120080, subject to the following conditions:

  
Approved for legal sufficiency  
M-NCPPC Office of General Counsel



1. This Preliminary Plan is limited to a maximum of 752 townhouse units on up to 752 lots, a maximum of 1,458 multi-family units on up to 95 lots (includes 84 lots for 2 over 2 units and 11 lots for multi-family buildings), 41,828 square feet of retail space on up to 3 lots shared with multi-family units, and a maximum of 131,422 square feet of office development on 1 lot. Additional lots are permitted for common areas, clubhouses, park and school sites, and other County facilities. Ten percent of the total number of residential units excluding MPDUs or resulting MPDU bonus density units must be Workforce Housing units, and 15% of the total number of residential units excluding workforce units must be Moderately Priced Dwelling Units (MPDUs).
2. The Planning Board has accepted the recommendations of the Montgomery County Department of Permitting Services (MCDPS) Water Resources Section in its letter dated June 13, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations set forth in the letter, which may be amended by MCDPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
3. The Planning Board has accepted the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letters dated June 13, 2012 and July 20, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval, except that any performance guarantees necessary to ensure that the trip reduction goals under Condition #4 are maintained will be determined by subsequent site plans. The Applicant must comply with each of the recommendations set forth in both letters, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
4. The Applicant must satisfy the Shady Grove Sector Plan's traffic mitigation requirements by entering into a Traffic Mitigation Agreement with the Planning Board and MCDOT. In the Agreement, the Applicant must participate in the Greater Shady Grove Traffic Management Organization (TMO) to assist in achieving the non-auto-driver mode share goals of the Sector Plan. As a new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area, the non-auto-driver mode share goals are a reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips with no deduction of existing trips. The Agreement must be executed prior to approval of the first certified site plan.

5. The Applicant must satisfy the Policy Area Mobility Review (PAMR) test by contributing to the Montgomery County Department of Transportation (MCDOT) \$292,500 (\$11,700 times 25 new peak-hour trips) for transportation infrastructure improvements within the greater Derwood/Shady Grove Policy Area. The PAMR payment must be made prior to issuance of any building permit.
6. The Applicant must dedicate and the record plat must reflect dedication of the following roadways as shown on the Preliminary Plan:
  - a. Crabbs Branch Way to the ultimate 120-foot right-of-way.
  - b. Shady Grove Road to the ultimate 150-foot right-of-way.
  - c. Road DD and Road JJ in the Shady Grove Station East area, that provide access to the elementary school site and Jeremiah Park, must be constructed to the Road Code Commercial Business Street standards, (2005.02 modified) with 70-foot rights-of-way.
7. Road P and Road I in the Shady Grove Station West area may be private streets subject to the following requirements:
  - a. Public easements must be granted for the roadways and must be reviewed and approved by MCDOT and M-NCPPC.
  - b. The design of the roads shall correspond to Montgomery County Road Code standard (2005.02 modified) for a similar public road, as modified in the cross-sections contained in the preliminary plan.
  - c. Installation of any public utilities must be permitted within such easement.
  - d. The roads may not be closed for any reason unless approved by MCDOT.
  - e. The public access easement must be volumetric to accommodate uses above or below the designated easement area.
  - f. Montgomery County may require the Applicant to install appropriate traffic control devices within the public easement and the easement must grant the right to the County to construct and install such devices.
  - g. Maintenance and Liability Agreements will be required for each Easement Area. These agreements must identify the Applicant's responsibility to maintain all of the improvements within the Easement Area in good fashion and in accordance with applicable laws and regulations.
  - h. Montgomery County will inspect these streets and ensure that each has been constructed in accordance with the corresponding Road Code standard for a similar public road as modified by the cross-sections contained in the preliminary plan.
  - i. The Applicant is obligated to remove snow and provide repairs to keep the roads in working order and open, and if, for any reason, the Applicant

does not, the County must have the right, but is not obliged, to remove snow and/or provide repairs.

8. Prior to the submission of a Site Plan for any development in the Shady Grove Station East area, the Applicant must record a plat of reservation for the Metro Access Road Partial Interchange. The land area indicated on the Preliminary Plan (23,973 square feet) may be enlarged after MCDOT conducts preliminary engineering for the partial interchange. This plat of reservation will be valid for a minimum of three years.
9. The Planning Board has accepted the recommendations of the Montgomery County Public Libraries (MCPL) in its letter dated June 1, 2012 and hereby incorporates them as conditions of the Preliminary Plan approval. These conditions may be amended by MCPL, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
10. The Planning Board has accepted the recommendations of Montgomery County Fire and Rescue (MCF&R) Services in its letter dated May 23, 2012 and hereby incorporates them as conditions of the Preliminary Plan approval. These conditions may be amended by MCF&R, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
11. The Applicant must dedicate to M-NCPPC the approximately 4.1 acre portion identified as "Block AA" in the Shady Grove Station East area on the Preliminary Plan for use as a local public park. The land must be dedicated to M-NCPPC through notation on the plat and by conveyance at the time of record plat in the form of a deed approved by the Office of General Counsel. At the time of conveyance, the property must be free of any trash and unnatural debris. Location and design of boundary markers and signs must be approved by M-NCPPC.
12. Regarding the Montgomery County Public Schools (MCPS) Site identified as "Block BB" in the Shady Grove Station East area on the Preliminary Plan for use as an elementary school site, the Applicant must:
  - a. Move the location of the school site to be co-located with the M-NCPPC park dedication required under condition 11.
  - b. Design the combined school and park site to be a minimum of 8.1 usable acres without any bisecting streets.
  - c. Ensure that the school and park site are served by frontage on a publicly dedicated right-of-way.
  - d. Amend the preliminary plan and plat the dedication of the school and park site in accordance with the above conditions before any site plan subject to this preliminary plan approval is filed for the Shady Grove Station East area or before January 1, 2017, whichever comes first.

13. Before the approval of the first Site Plan for Shady Grove Station East, construction of the trail system around the regional stormwater management pond at Crabbs Branch Way and Redland Road must commence. Trail design details must be coordinated with the Parks Department.
14. The Applicant must reconstruct the entire section of Crabbs Branch Way from Shady Grove Road to Shady Grove Metro Access Road to include on-street parking, shared use paths, and a landscaped median.
15. The Applicant must provide streetscape, landscaping and pedestrian improvements along Shady Grove Road, between the CSX tracks and Metro Access Road, during Site Plan review for Shady Grove Station West.
16. The Applicant must install a traffic signal at each intersection of Crabbs Branch Way and the proposed internal roads "E" and "BB", if MCDOT determines the signals are warranted.
17. The Applicant must coordinate with the Washington Metropolitan Area Transit Authority (WMATA) to provide pedestrian improvements between Road "P" and the Shady Grove Metro Station during the first Site Plan review for Shady Grove Station West.
18. The Applicant must submit a Final Forest Conservation Plan for the area covered by this Preliminary Plan, to be approved with the first Site Plan submitted.
19. The Applicant must re-examine impacts to specimen trees number 32, 39, and 54 during Site Plan review to see if these trees can be saved through site design and construction techniques that reduce impacts to the critical root zones.
20. Fifty shade trees of at least 3" caliper must be included in the Site Plan as mitigation for the removal of 18 specimen trees under the variance. If it is found that trees 32, 39, and/or 54 can be saved, the number of shade trees required may be reduced accordingly. The formula for determining mitigation is 1" of diameter replaced for every 4" of diameter removed, with replacement trees being 3" caliper minimum. These trees do not count toward afforestation requirements.
21. On-site and off-site planting requirements to fulfill the 19.94 acres of forest conservation mitigation will be determined by the Final Forest Conservation Plan.
22. The Applicant must submit a Phase II Noise Analysis prior to Site Plan approval and incorporate noise mitigation measures into the Site Plan.

23. The Applicant must obtain approval of a detailed floodplain study from the Montgomery County Department of Environmental Protection prior to Site Plan approval as required by the Stormwater Management Concept approved by MCDPS.
24. Final approval of the number and location of dwelling units, site circulation, parking, sidewalks, signs, shared use paths, open space and public use space, and sitting areas will be determined at Site Plan.
25. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for up to 12 years (144 months) from the date of mailing of the Planning Board Resolution, according to the phases outlined below. Because the validity period is longer than the typical seven years, a phasing schedule for the APF and preliminary plan validity period, in accordance with Sections 50-20(c)(3)(B), 50-34(g), and 50-35(h)(2)(B) of the Subdivision Regulations, is required. Plats must be recorded and building permits issued as follows:
  - Phase I – 375 residential units, including MPDUs and workforce housing units, within 60 months from the 30th day after the Resolution is mailed;
  - Phase II – 125 residential units, including MPDUs and workforce housing units, within 36 months of the expiration of the Phase I validity period;
  - Phase III – 250 residential units, including MPDUs and workforce housing units, 41,828 square feet of retail space, and the library within 36 months of the expiration of the Phase II validity period; and
  - Phase IV – 1,460 residential units, including MPDUs and workforce housing units, and 133,250 square feet of commercial office space within 12 months of the expiration of the Phase III validity period.
26. If a Development District is proposed by Montgomery County, the Applicant must participate in the District.
27. With the exception of demolition of the existing building and site improvements on the property, in accordance with the County's Smart Growth Initiative, no clearing, grading, or recording of plats prior to the approval of the certified site plan.
28. TDRs must be secured before each plat is recorded for multi-family development. Record plat must reflect serialization and liber/folio reference for all TDRs utilized by the development. A TDR will be purchased for every three multi-family residential units.
29. The final number of Workforce Housing units, MPDUs and TDRs will be determined during Site Plan review.

30. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
31. The record plat must reflect a public use and access easement over all private streets and adjacent parallel sidewalks.
32. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels and/or easements.
33. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the approved Preliminary Plan with respect to lot configuration or location or right-of-way width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.
34. 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 review. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for this lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
35. Prior to the issuance of any residential building permit covered by this Preliminary Plan, the Applicant must make a School Facilities Payment at the elementary school level to the Montgomery County Department of Permitting Services. The Applicant is proposing townhouses and mid/low-rise multi-family dwellings with residential parking as defined by the Annual School test effective July 1, 2011 for the Gaithersburg Cluster. This amounts to \$868.78 per residential townhouse, \$456.80 per multi-family garden apartment, and \$34.42 per high/low rise residential apartment at the elementary school level. If the type of residential units changes the applicable school facilities payment, per the Annual School Test effective July 1, 2011, will apply.

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 Preliminary Plan substantially conforms to the Master Plan.*

The Property is within the Metro North-CSP and Jeremiah Park neighborhoods of the Sector Plan, although the Preliminary Plan refers to Metro North-CSP as Shady Grove Station West and Jeremiah Park as Shady Grove Station East. A Sectional Map Amendment following the Sector Plan rezoned the Property to the Transit-Oriented Mixed Use/Transferable Development Rights (TOMX-2/TDR).

The Sector Plan provides specific recommendations for both areas of the Property. Shady Grove Station West is within the Metro Neighborhoods, while Shady Grove Station East is within the Plan's Transitional Area and is identified as Jeremiah Park. The Metro Neighborhoods are envisioned "as an urban village, a place that provides vitality, convenience, and a human scale of development. It should become a residential mixed-use area with some office and community-serving retail uses, and recreational areas providing a focus for community life and services. Functionally integrated with the Metro station, the proposed street pattern will create an interconnected network of streets and sidewalks that ensure good vehicular and pedestrian access to Metro."

The Sector Plan recommends that development in the Transitional Area should be "less dense than the Metro Neighborhoods with open spaces, residential uses, and public facilities to serve the planning area. The Transition Area's transitional uses are an opportunity to achieve compatibility and provide needed public facilities for the Derwood Communities." The Preliminary Plan implements the Sector Plan recommendations with office and retail uses, residential development, a local library and interconnected network of streets on Shady Grove Station West, while public facilities, including the local park and dedicated school site and residential development are on Shady Grove East. The Preliminary Plan provides a library in an alternative location from the Plan's recommendations, on the ground floor of a multi-family building instead of as a free-standing community building in a "highly prominent location." The Planning Board accepts the Department of Public Libraries' recommendation to accept the library as proposed because it is in a suitable location within the dense multi-family residential and retail area. Further, Board finds that the proposed location creates a focal point that terminates the retail area.

### Street Network

The public and private streets shown on the Preliminary Plan are consistent with the Sector Plan recommendations. The Sector Plan recommends a new grid system of streets forming short walkable blocks, including Streets "J", "I", and "F" as master plan streets with a minimum 70 feet right-of-way. Streets "I and J" -identified as Roads "DD and JJ" on the preliminary plan- are on Shady Grove Station East and a portion of Streets "I and F" are on Shady Grove Station West (Road P and Road I).

The Sector Plan recommends that "at the time of preliminary plan review, specific street locations shall be determined. Recommended rights-of-way are needed to ensure adequate lanes, bus access, emergency vehicle access, pedestrian sidewalks and street parking." It further recommends that "those streets that are listed in the Street and Highway Classification table as Streets 'F' (north of Street 'H'), 'I', and 'J' in the County Service Park are illustrative of the type of right-of-way needed to improve access to Metro and local circulation. Additional streets in the County Service Park that are illustrated but not listed in the table are also of the type desired." The Preliminary Plan road alignments are analogous to the Sector Plan road network.

The Preliminary Plan implements the Sector Plan recommendation for public streets with Roads "DD and JJ" on Shady Grove Station East as public streets. These streets provide access to the local park and school site, and will be designed to the County's Road Code Business Street District Standard, 2005.02. The Preliminary Plan shows the correct dedication for these streets. Remaining streets in Shady Grove Station East will be private streets.

Roads "P" and "I," which serve the library and the multi-family residential and retail area, are private streets. The Planning Board accepts these private streets since several conditions of approval and requirements are added to ensure public access, design standards, and a maintenance liability agreement with Montgomery County Department of Transportation (MCDOT). These private streets allow greater flexibility to incorporate new Environmental Site Design (ESD) stormwater management techniques within the right-of-way. As a condition of approval, all streets throughout the development will have public access easements.

Section 50-29(a) (2) of the Subdivision Regulations states that, "except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstance, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands. In multi-family and town house development, not subdivided into individually recorded lots, the board may approve more than two (2) lots or buildings on private roads or drives, provided there is adequate access from such roads to a public street, as above."

The Planning Board finds that the private roads shown on the Preliminary Plan achieve the status of a public road because the following criteria are achieved:

- The roads are fully accessible to the public;
- They have minimum pavement widths and be accessible to fire and emergency vehicles;



- They are designed with safe, adequate, and efficient circulation, parking, and sidewalks; and
- They provide frontage for all buildings.

The Planning Board further finds that the street network, with the specified conditions of approval, will provide unrestricted public access, is supported by other County agencies, and will implement the Sector Plan's recommendations.

#### Partial Interchange

A partial interchange is recommended in the Sector Plan at the southern portion of the County Service Park (CSP), east of Crabbs Branch Way. A preliminary concept for the interchange has been developed. However, the specific amount of land to reserve for the partial interchange is unknown at this time since detailed engineering has not been completed. No development is proposed in the near-term for this area, and the partial interchange requires significant engineering design. The Planning Board finds that the reservation of land should be determined prior to submission of a site plan for any development on SGS East. The funding for the partial interchange is required to be appropriated in the CIP before stage 2 of the Sector Plan may begin.

#### Crabbs Branch Way

Crabbs Branch Way, between Redland Road and Shady Grove Road, is classified as a commercial business street with a minimum right-of-way at 100 feet. Creating a 'main street' with a landscape median and a shared use path on Crabbs Branch Way is a recommendation in the Sector Plan. The Preliminary Plan shows a right-of-way at 120 feet, which is the existing street right-of-way, to accommodate on-street parking, a landscape median, and a shared use path on the east side of the street. The Planning Board accepts the existing right-of-way since it achieves the Sector Plan's recommendation for a 'main street' with a landscape median, shared use path, and on-street parking.

#### Shady Grove Road

Shady Grove Road, between the western plan boundary and I-370, is classified as a major highway with a minimum right-of-way at 150 feet. Upgrading Shady Grove Road with sidewalks, lighting, landscaping and street trees are Sector Plan recommendations. The Preliminary Plan shows a right-of-way at 150 feet with 75 feet dedication from the existing centerline of Shady Grove Road. This Preliminary Plan will provide improvements between the CSX tracks and the Metro Access Road.

#### Bikeway Network

The Preliminary Plan will begin to implement the bikeway recommendation for Crabbs Branch Way. The Sector Plan recommends a Class I bikeway (SP-53) along the east side on Crabbs Branch Way, from Amity Drive to Redland Road. The Preliminary Plan

will implement the shared use path on the east side of Crabbs Branch Way along the Property.

At Shady Grove Road and Crabbs Branch Way, the Sector Plan recommends an underpass under Shady Grove Road to connect both sides of the street. The Preliminary Plan will not implement this recommendation, but it will provide at grade improvements at the intersection. The Planning Board supports at grade improvements since at-grade connections are more direct and the Grove Shopping Center, which is northeast of Shady Grove Road, has not submitted any redevelopment plans and it is unknown if any potential redevelopment will occur. The Sector Plan acknowledges that both Shady Grove Station East (Jeremiah Park) and the Grove Shopping Center must redevelop in order to implement the shared use path under Shady Grove Road.

### Environmental

Enhancing the natural environment with green open spaces, establishing a forest buffer along the Metro Access Road, providing noise mitigation, and using environmental site design techniques are some of the recommendations in the Sector Plan. The Preliminary Plan will utilize environmental site design techniques, such as bioswales and permeable surfaces; noise walls and parking garages adjacent to CSX tracks will provide noise mitigation measures for townhouses and multi-family residential; some trees have been retained along the Metro Access Road; new public and private open spaces are integrated throughout the development; and new streetscape is proposed with street trees. These measures will substantially implement the Sector Plan's environmental recommendations.

### Staging

The Sector Plan establishes a staging plan that is centered on the potential redevelopment or retention of the CSP with different levels of residential and non-residential development allowed. The three phased staging plan specified the amount of residential development and non-residential development along with required infrastructure triggers, if the CSP was retained or redeveloped. The Sector Plan recommends that "housing capacity of 2,480 units and 520 jobs will be held for development on Jeremiah Park and the Metro North Neighborhood (CSP), unless the Executive branch determines that a land exchange is not feasible or fails to enter into an agreement with a private developer to relocate the CSP within two years of the adoption of the Plan." Further, the Executive Branch was given two years from the adoption of the Sector Plan to complete negotiations to relocate the CSP.

The Planning Board has weighed the Executive Branch's efforts to finalize negotiations with the two year reservation recommended in the Sector Plan and believes that although a development agreement was finalized after the two year reservation period expired, the efforts to achieve the intent of the Sector Plan were in substantial conformance with the Master Plan's recommendations. This Preliminary Plan allows for

the complete implementation of the total amount of development, public facilities, and infrastructure recommended in the Sector Plan. In light of this, and considering all of the Master Plan's objectives, even if the Board could not find that timing of the negotiations' completion substantially conformed to the Master Plan, the Board would find that recommendation to be no longer appropriate.

The Preliminary Plan will implement the Sector Plan's staging recommendations since it provides an elementary school site; a local library; public parks, including Jeremiah Local Park; transportation mitigation agreements will be required when a site plan is submitted; and there is sufficient capacity to accommodate the total amount of development.

### Density

The Preliminary Plan density is generally consistent with Sector Plan's overall recommendations. The Sector Plan established base densities while using bonus density provisions through Workforce Housing, Transferable Development Rights (TDRs), and Moderate Priced Dwelling Units (MPDUs) to increase the amount of residential development. The Sector Plan recommends that "base density can be increased by 10 percent workforce housing, 20 percent Transferable Development Rights (TDRs), and 22 percent Moderate Priced Dwelling Units (MPDUs)."

The Sector Plan also envisioned joint development between the CSP and Casey 6 and 7, which are two properties northwest of the intersection of Shady Grove Road and Crabbs Branch Way. In March 2007, the Planning Board approved preliminary plan (#1-20070320) for Casey 6 and 7 with 340 dwelling units and 329,300 square feet of office development. These properties were owned by EYA, but were later purchased by Montgomery County and the State of Maryland to accommodate some of the current CSP uses and the maintenance facility for the Inter-county Connector (MD 200), respectively.

The Preliminary Plan proposes 689 dwelling units on SGS East and 1,521 dwelling units on SGS West. The Sector Plan recommends "up to 700 units with bonus" densities on SGS East (p.52). And, up to "1,540 units with bonus density if jointly developed with Casey 6 and Casey 7" on SGS West (p.44).

The residential density on SGS East is within the Plan's recommendation. Since joint development is no longer possible on Casey 6 and 7, the higher base density for SGS West increases the amount of residential development, including affordable housing, within close proximity to the Metro Station, and it is within the Metro Neighborhoods concept of the Sector Plan. This additional residential development will only occur on SGS West, which is within the Sector Plan's Metro Neighborhoods. The Metro Neighborhoods are envisioned as the area of the Sector Plan where the intense development will occur. Relocating additional units from the Casey properties to the Metro Neighborhoods is consistent with the overall density recommendations of the Sector Plan, and with the Plan's goal of targeting density closest to the Metro.

### Unit Mix

The Sector Plan recommends a mix of residential unit types must be provided throughout the CSP. The Applicant will provide a range of units, including multi-family residential, townhouses, and 2 over 2 multi-family units as well as MPDU and Workforce units.

### Building Heights

The Preliminary Plan building heights substantially conform to the Sector Plan recommendations. For Shady Grove Station West, the Sector Plan recommends "limiting building heights to eight stories closest to the Metro and stepping down to four stories along Crabbs Branch Way for a compatible transition" and "limiting townhouse building heights to 4 stories with multi-family units up to five stories. Maintain a 4 story building height along Crabbs Branch Way" for SGS East. Both multi-family residential buildings and townhouses building heights will be determined at Site Plan review. However, no buildings will exceed 70 feet in height.

### Public Facilities

The Preliminary Plan provides a local library, a dedicated elementary school site, and a local park site, Jeremiah Park. The Sector Plan designates "Jeremiah Park as the preferred site for an elementary school"; it recommends "a minimum of four acres for an urban park in the Transition Area, called Jeremiah Park after Derwood's founder," and a local library in the Metro North-CSP neighborhood.

Although the library is not located at Shady Grove Road and Crabbs Branch Way as recommended in the Sector Plan, the Planning Board finds that the library location within the most compact area of the development is appropriate. The Board also accepts the recommendations of the Department of Public Libraries. County-wide, the Department of Public Libraries is providing smaller libraries because of fiscal and budgetary challenges and new innovations in technology. Further, a large regional library was recently built in Rockville, which is one Metro stop south from Shady Grove.

The dedication of the public park and school site are important public facilities that will implement the Sector Plan recommendations. The school site is important since there are capacity limits at the elementary school level. The Planning Board finds that the location of the elementary school shown on the Preliminary Plan is contrary to the Sector Plan recommendations. Further, it does not take advantage of operational efficiencies by co-locating the school with the park. Therefore, the Planning Board finds, and as a condition of this approval requires, that the Applicant must co-locate both facilities when a Site Plan is submitted for Shady Grove Station East or by January 1, 2017, whichever comes first.

### Transferable development rights (TDRs)

The Preliminary Plan is subject to Section 59-C-13.2431 and Section 59-C-13.2433 of the Zoning Ordinance, special regulations for development using transferable development rights in the TOMX/TDR zone and development approval procedures under the standard and optional method of development. The overall dwelling units per acre (dus/acre) is 24.5, while the total Floor Area Ratio (FAR) is 1.125.

Both the dwelling units per acre and FAR measures are above the standard method threshold (0.5 FAR or 20 dus/acre) that requires TDRs, but below the optional method threshold that requires TDRs (1.6 FAR or 40 dus/acre). The Applicant proposes to build 279 TDR bonus units, all multi-family, and to provide 93 TDRs (64 for SGS West and 29 for SGS East) for the development. The Planning Board finds that this is consistent with Section 59-C-13.2431 of the Zoning Ordinance, which requires TDRs in a Metro Station Policy at a ratio of one TDR for three multi-family dwelling units.

### Affordable Housing

The Sector Plan encourages maximizing affordable housing, including through the provision of MPDUs and workforce housing.

The Preliminary Plan will provide 476 dwelling units (21.5 percent) of the total residential development as affordable units, Workforce Housing units and MPDUs. The Applicant will provide 169 workforce housing units throughout the development, including 116 workforce dwelling units (25 townhouses and 91 multi-family dwelling units) in Shady Grove Station West and 53 workforce dwelling units (30 townhouses and 23 multi-family dwelling units) in Shady Grove Station East. Since the adoption of the Sector Plan and the TOMX/TDR zone, the requirement for workforce housing is now optional rather than required.

The Applicant will also provide 307 Moderately Priced Dwelling Units (MPDUs) in the development, including 211 MPDU residential units (44 townhouses and 167 multi-family) in Shady Grove Station West and 96 MPDU residential units (47 townhouses and 49 multi-family) in SGS East. The Applicant is utilizing the bonus provision in the zone for MPDUs. Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds the Preliminary Plan substantially conforms to the Approved and Adopted 2006 Shady Grove Sector Plan.

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

#### Site Location and Vehicular Site Access Points

The Property is located south of Shady Grove Road and Crabbs Branch Way and is within 1/2 of a mile from the Shady Grove Metro Station entrance. Primary vehicular access to the property is from Crabbs Branch Way.

#### Transportation Demand Management

The Property is within the boundary of the Greater Shady Grove Transportation Management District (TMD). The Applicant must enter into a traffic mitigation agreement to participate with the TMD and assist the County in achieving and maintaining its non-auto driver mode share (NADMS) goals as required by the conditions.

The Sector Plan recommends that any new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area must achieve the non-auto-driver mode share goals reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips.

#### Public Transit Service

The Shady Grove Metrorail Station is located within walking distance from the subject property. Ride-On routes 43 and 61 operate along Shady Grove Road along the northern property frontage. Currently, no bus routes operate along Crabbs Branch Way between Shady Grove Road and Redland Road.

#### Sector-Planned Roadways and Bikeways

In accordance with the *Sector Plan* and the *Countywide Bikeways Functional Master Plan*, the classified roadways and bikeways are as follows:

1. Crabbs Branch Way is designated as a four-lane divided commercial business district street, B-2, with a recommended 100-foot right-of-way. The Applicant proposes 8-foot-wide shared use path on the east side of the road, consistent with the Countywide requirements for shared use path, SP-53.

2. Shady Grove Road, between the western plan area boundary and I-370 is designated as a six-lane divided major highway, M-42, with a recommended 150-foot right-of-way and a Countywide bike lanes, BL-30.
3. The (Shady Grove) Metro Access Road is a four-lane divided major highway, M-94, with a recommended 150-foot right-of-way and Sector Plan shared use path, B 7. In addition, the Sector Plan recommends a partial interchange with Crabbs Branch Way.
4. The entire segment of master-planned Road "F" (proposed as Road "P") is designated as a two-lane business district street, B-9, with a recommended 70-foot rights-of-way. This street is proposed as a private street serving the proposed commercial area. As specified in the conditions, the Applicant must satisfy certain "private road" requirements.
5. The relocated segment east of Crabbs Branch Way of master-planned Road "I" (proposed as Road "DD") is designated as a two-lane business district street, B-12, with a recommended 70-foot rights-of-way. This street must be a public street as it serves as access to the proposed public school site. A private maintenance and liability agreement, however, may be permitted to allow the Applicant to build stormwater management facilities within the right-of-way.
6. The segment west of Crabbs Branch Way of master-planned Road "I" (proposed as Road "I") is designated as a two-lane business district street, B-12, with a recommended 70-foot right-of-way. This street is proposed to be a private street serving the proposed commercial area. As specified in the conditions, the Applicant must satisfy certain "private road" requirements.
7. The entire segment of master-planned Road "J" (proposed as Road "JJ") is designated as a two-lane business district street, B-13, with a recommended 70-foot right-of-way. This street must be a public street as it serves as access to the proposed public school site. A private maintenance and liability agreement, however, may be permitted to allow the Applicant to build stormwater management facilities within the right-of-way.

#### Transportation Adequate Public Facilities Review

Table 1 below shows the net increase in the vehicular peak-hour trips generated by the proposed redevelopment during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.).

*Table 1: Net Number of Site-Generated Trips*

Tenant	Square Feet or Units	Peak-Hour Trips	
		Morning	Evening
<b>Proposed Mixed Use Redevelopment</b>			
Residential Townhouse	752	389 (201)	431 (250)
Mid-Rise Apartments	1,458	590 (384)	688 (399)
General Office Use	131,422	215 (162)	209 (146)
General Retail Use	41,828	82 ( 49)	328 (189)
Public Park, Library, & Elementary School Site	n/a	n/a	
<b>Subtotal</b>		1,276 (796)	1,656 (984)
Trip Credit for the Existing Traffic generated by the County Service Park		290	536
<b>Net Increase in Peak-Hour Trips</b>		986 (506)	1,120 (448)

Total vehicular trips were reduced based on the following:

- a. **Close Proximity to Metrorail Station:** The percent of trips generated by nearby developments that use transit rather than their automobile during the weekday morning and evening peak hours based on the results of WMATA's Development-Related Ridership Survey.
- b. **Compatible Land Uses:** The percent of the trips that can use non-automobile transportation modes to travel between compatible land uses within a mixed-use development, such as between apartments/townhouses and retail businesses.

The trip credit was determined for the existing trips generated by the County Service Park facilities located along Crabbs Branch Way. Driveway counts were collected at the existing curb cuts with the selected peak hour being the highest of the three hours within morning and evening peak periods at the critical intersection of Shady Grove Road and Crabbs Branch Way. The trips shown in Table 1 above are total trips that include the new, diverted, and pass-by trips, reduced for close proximity to Metro and compatible land uses, as described in a. and b. above. The new trips are shown in parentheses after the total trips.

In accordance with the Local Area Transportation Review and Policy Area Mobility Review Guidelines, a traffic study is required to satisfy LATR test because the net number of peak-hour trips generated by the proposed redevelopment is 30 or more peak-hour trips within the weekday morning and evening peak periods. Based on the result of the traffic study, Table 2 below shows



the calculated Critical Lane Volume (CLV) values at the analyzed intersections in the following traffic conditions:

1. Existing: Existing traffic conditions as they exist now.
2. Background: The existing condition plus the trips generated from approved but un-built nearby developments.
3. Total: The background condition, minus the County Service Park trips, and plus the mixed use redevelopment trips.

As noted with an asterisk in Table 2 below, these CLV values in the total traffic condition are less than the CLV values in the background traffic condition. The net traffic impact by the proposed redevelopment was determined by removing the trips generated from the County Service Park facilities and adding the trips generated by the proposed mixed use redevelopment. As a result, the trips to/from the County Service Park travel in the reverse direction compared to the trips from/to the proposed 2,210 housing units, especially to/from the west on Shady Grove Road.

Table 2: Critical Lane Volume Values

Analyzed Intersection	Weekday Peak Hour	CLV Congestion Standard	Traffic Condition		
			Existing	Back-ground	Total
Shady Grove Road & Epsilon Drive	Morning	1,475	1,358	1,387	1,368*
	Evening		1,229	1,254	1,206*
Shady Grove Road & Briardale Road	Morning	1,475	1,380	1,409	1,390*
	Evening		1,400	1,424	1,377*
Shady Grove Road & I-370 Northbound Ramp	Morning	1,800	928	945	939*
	Evening		1,356	1,380	1,322*
Shady Grove Road & I-370 Southbound Ramp	Morning	1,800	855	874	902
	Evening		964	1,015	1,001*
Shady Grove Road & Crabbs Branch Way	Morning	1,800	1,035	1,105	1,171
	Evening		1,135	1,200	1,299
Shady Grove Road & Oakmont Avenue	Morning	1,800	1,129	1,163	1,208
	Evening		1,003	1,045	1,035*
Shady Grove Road & Solid Waste Transfer Driveway	Morning	1,800	797	831	876
	Evening		760	790	840
Shady Grove Road & Frederick Road (MD 355)	Morning	1,800	1,564	1,626	1,657
	Evening		1,427	1,492	1,550
Redland Road & Needwood Road	Morning	1,475	845	888	889
	Evening		789	831	828*
Redland Road & Crabbs Branch Way	Morning	1,800	1,104	1,174	1,263
	Evening		1,054	1,144	1,158
Redland Road & Shady Grove Metro Access Road	Morning	1,800	934	1,010	1,032
	Evening		716	775	777
Redland Road & Somerville Drive	Morning	1,800	562	620	632
	Evening		832	889	900
Crabbs Branch Way & Indianola Drive	Morning	1,800	1,094	1,125	1,220
	Evening		979	998	1,105
Indianola Drive & Frederick Road (MD 355)	Morning	1,500	1,117	1,153	1,185
	Evening		984	1,017	1,057
Redland Road & Needwood Road	Morning	1,475	1,041	1,169	1,207
	Evening		1,030	1,077	1,114

The CLV values at all analyzed intersections in all traffic conditions are less than their congestion standard and, thus, the LATR test is satisfied.

Policy Area Mobility Review (PAMR)

Under the current *Subdivision Staging Policy*, the Applicant must satisfy PAMR by mitigating 5% of the new peak-hour trips generated by the proposed mixed-use development. The Applicant proposes to pay \$292,500 (or 11,700 times 25 [5% of 506 morning peak-hour trips]) to MCDOT to fund transportation improvements located in the PAMR Derwood/Shady Grove Policy Area.

Other Public Facilities and Services

Except for schools, other public facilities and services are available and will be adequate to serve the proposed development. This site is served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the property. Police stations, firehouses, and health services are currently operating within the standards set by the effective *Subdivision Staging Policy*.

This Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS), which has determined that the property has adequate access for emergency vehicles.

The Property is located within the Gaithersburg High School Cluster, which requires a School Facilities Payment at the elementary school level. This amounts to \$868.78 per residential townhouse, \$456.80 per multi-family garden apartment, and \$34.42 per high/low rise residential apartment at the elementary school level. The School Facilities Payment must be made prior to the issuance of any residential building permit covered by this Preliminary Plan. Therefore, based on the analysis above and with the conditions of approval, the Planning Board finds public facilities are adequate to support and service the area of the Preliminary Plan.

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision.*

The lots have been reviewed for compliance with 50-29(a) of the Subdivision Regulations. The Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

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

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for the site was approved on June 15, 2012. The site contains no forest, streams or their buffers, wetlands or their buffers, 100-year floodplains, or rare, threatened or endangered species.

A. *Forest Conservation*

The Preliminary Forest Conservation Plan submitted with the Preliminary Plan indicates that 5.31 acres of forest are slated for removal for the development of this project. This will result in a total afforestation and reforestation requirement of 19.94 acres. The Applicant proposes to meet this requirement through a combination of landscape credit and offsite forest conservation banking. Due to the size of the site and the amount of forest being cleared, this project does not qualify for the use of fee-in-lieu payments to meet its mitigation requirements. Final amounts of landscape credit and offsite forest banking to meet the mitigation requirement will be determined by the Final Forest Conservation Plan. The Preliminary Forest Conservation Plan does not propose any Category I easements on site. The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

**B. Forest Conservation Variance**

The Applicant is requesting a variance for the removal of 18 specimen trees on the Property that are 30 inches or greater in diameter. Ten are on Shady Grove Station West and eight are on Shady Grove Station East. These trees are listed in the table below:

Tree Number	Species	DBH	Status
4	<i>Quercus rubra</i>	33"	Remove
5	<i>Tilia cordata</i>	34"	Remove
14	<i>Carya tomentosa</i>	35"	Remove
16	<i>Carya tomentosa</i>	32"	Remove
20	<i>Quercus phellos</i>	30"	Remove
21	<i>Quercus phellos</i>	30"	Remove
30	<i>Pinus virginiana</i>	32"	Remove
31	<i>Fraxinus pennsylvanica</i>	32"	Remove
32	<i>Quercus rubra</i>	31"	Remove
33	<i>Acer rubrum</i>	41"	Remove
39	<i>Acer rubrum</i>	37"	Remove
54	<i>Quercus rubra</i>	41"	Remove
55	<i>Liriodendron tulipifera</i>	37"	Remove
57	<i>Liriodendron tulipifera</i>	31"	Remove
60	<i>Liriodendron tulipifera</i>	34"	Remove
61	<i>Liriodendron tulipifera</i>	30"	Remove
63	<i>Liriodendron tulipifera</i>	30"	Remove
65	<i>Liriodendron tulipifera</i>	31"	Remove

**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.

An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure;

are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on June 4, 2012 for the impacts/removal to trees with the proposed layout. The Applicant proposes to remove 18 trees that are 30 inches or greater DBH and to impact, but not remove, 5 others that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

*Unwarranted Hardship Basis*

The proposed development is in accordance with both the intent and recommendations of the Sector Plan and the Transit-Oriented Mixed Use /Transferable Development Rights (TOMX-2/TDR) zone, both of which are intended to create higher density uses in the vicinity of the Shady Grove Metro Station. The SGS West portion of the site lies closest to the Metro station and is recommended for transformation into an urban village. The SGS East portion of the site is identified as a transition area between the more intensely developed Metro neighborhoods and the existing nearby residential communities and is envisioned to provide multi-family and townhouse residential units, a local park, and an elementary school site. The combination of urban scale of development, medium-to-high density residential development, and major public facilities and amenities further constrains the site. This allows site to be intensely developed to achieve the Sector Plan's vision.

Variance trees numbering 4, 5, 14, 16, 20, 21, 30, 31, and 33 are all isolated trees that currently stand in the middle of the site, primarily in islands in the middle of parking lots. Variance trees numbering 55, 57, 60, 61, 63, and 65 occur along the site's southwestern boundary with the CSX railroad right-of-way where two large parking structures are proposed. Saving these trees would require major changes to the proposed development and would challenge the ability of the project to meet the goals of the Sector Plan.

Variance trees numbering, 32, 39, and 54 lie along the edges of the site. The proposed limits of disturbance would affect significant portions of the critical root zones of these trees and indicate that the trees will need to be removed. These three trees should be reexamined at the time of Site Plan to see if modifications can be made to the grading and limits of disturbance that would allow these trees to be saved.

Variance trees numbering 35, 36, 37, and 38 were originally proposed for removal. These trees lie along the northeast boundary of the Property at the edge of a small off-site forest stand. At staff's request, the Applicant worked to pull back adjacent development and reduce impacts to these trees. Most of the critical root zone impacted lies under an existing road around the edge of the Property; this means that most of these trees' root systems will be found in the forest behind the trees rather than under the existing pavement. Staff believes that these trees can be saved with appropriate tree protection measures.

Tree number 51, which is to be saved, will have no critical root zone impacts; therefore, technically, it does not need to be included in the variance.

Not allowing the removal of Variance trees numbering 4, 5, 14, 16, 20, 21, 30, 31, 32, 33, 39, 54, 55, 57, 60, 61, 63, and 65, and the impacts to Variance trees numbers 35, 36, 37 and 38 would require major changes to the proposed development design which is proposed to be consistent with the Sector Plan. Staff concurs that the Applicant has a sufficient unwarranted hardship to consider a variance request.

### *Variance Findings*

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

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

The Planning Board finds that the removal of 18 variance trees is consistent with the requirements and constraints of the Sector Plan, the zone, and what is intended for the property, public facilities, and road networks. Granting the variance would not confer on the Applicant a special privilege that would be denied to other applicants.

The proposed design has attempted to balance all of the competing factors that constrain the site. While 18 variance trees will need to be removed, the Applicant has modified its plans to reduce the number of variance trees that must be taken. Impacts to the other variance trees have been limited and, as a result, they will likely be preserved. Given the intensity of the development, impacts to variance trees are to be expected.

The Planning Board believes that reasonable steps have been taken to minimize impact to variance trees, and that granting the variance will not confer a special privilege to the Applicant.

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

The Planning Board finds that the variance is based on the constraints of the site and the proposed development density, public facilities, and road network are recommended in the Sector Plan, rather than on conditions or circumstances which are the result of actions by the Applicant.

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

The Planning Board finds that the variance is a result of the proposed site design and layout on the Property, and not as a result of land or building use on a neighboring property. There are no conditions relating to land or building use, either permitted or nonconforming, on a neighboring property that have played a role in the need for this variance.

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

The Planning Board finds that granting the variance will not violate State water quality standards or cause measurable degradation in water quality. The Montgomery County Department of Permitting Services (DPS) has approved a stormwater management concept, dated June 13, 2012 for the Property. The Stormwater Management (SWM) concept plan incorporates a combination of on-site structural water quality treatment facilities and Environmental Site Design (ESD) practices including micro-scale treatment facilities and alternative surfaces. Runoff in excess of the ESD treatment volume will continue to be treated by the Crabbs Branch Regional stormwater management pond. The addition of on-site ESD practices should improve the water quality of runoff generated by this property.

#### Mitigation for Trees Subject to the Variance Provisions

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. There are 18 trees proposed for removal as a result of the proposed development. There will also be some disturbance within the CRZ of another 4 trees but they are excellent candidates for safe retention. No mitigation is recommended for trees impacted but retained.

Therefore, the Planning Board is requiring the replacement occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 601 caliper inches of trees removed, the required mitigation will be 50 native canopy trees with a minimum size of 3" DBH. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. The Planning Board is also requiring the 50 native canopy trees with a minimum size of 3" DBH to the landscape plan. Because these trees are in mitigation for specimen trees removed, they do not count toward afforestation requirements.



5. *All storm water management requirements shall be met as provided in Chapter 19, article II, title "Storm Water Management," Sections 19-20 through 19-35.*

A stormwater management concept plan was approved by the MCDPS on June 13, 2012, meeting stormwater management requirements through a variety of Environmental Site design techniques and structural stormwater management facilities.

BE IT FURTHER RESOLVED, that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successors in interest to the terms of this approval.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 85 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), 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 [modify as required if Board approves phases with concurrent validity periods – or delete if phased validity periods are set forth in conditions of approval]; and

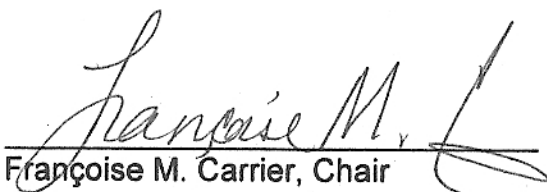
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 11 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, September 6, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER  
MCDPS-WATER RES. PLAN REVIEW  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ  
DHCA  
100 MARYLAND AVENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY  
MCDPS-ZONING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON MPDU  
MANAGER, DHCA  
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BOWMAN CONSULTING  
MARK STIRES  
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SUITE 302  
ALEXANDRIA, VA 22314

EYA, LLC  
A. J. JACKSON  
4800 HAMPTON LANE  
SUITE 300  
BETHESDA, MD 20814

MR. GREG LECK  
MCDOT  
100 EDISON PARK DRIVE  
4<sup>TH</sup> FLOOR  
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MR. ATIQ PANJSHIRI  
MCDPS-RIGHT-OF-WAY  
PERMITTING  
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ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS  
MCDPS-LAND DEVELOPMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ALAN SOUKUP  
MCDDEP-WATER RESOURCE  
PLANNING  
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2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

EYA/CSP ASSOCIATES  
C/O EYA, LLC  
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4800 HAMPTON LANE  
SUITE 300  
BETHESDA, MD 20814

EYA, LLC  
ROBERT YUNGENTAUB  
4800 HAMPTON LANE  
SUITE 300  
BETHESDA, MD 20814

MR. RICHARD BRUSH, MANAGER  
MCDPS-SEDIMENT/STORMWATER  
INSPECTION & ENFORCEMENT  
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2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI  
MCDPS-SITE PLAN ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN  
MCDPS-WELL & SEPTIC  
255 ROCKVILLE PIKE  
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ROCKVILLE, MD 20-850

LINOWES & BLOCHER  
BARBARA SEARS  
7200 WISCONSIN AVENUE  
SUITE 800  
BETHESDA, MD 20814

MONTGOMERY COUNTY  
DIANE SCHWARTZ JONES  
EOB 101 MONROE STEET  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

EYA, LLC  
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SUITE 300  
BETHESDA, MD 20814



**ATTACHMENT B**

RECEIVED  
4/23/14

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

MCPB No. 14-22  
Preliminary Plan No. 12012008A  
Shady Grove Station  
Date of Hearing: April 17, 2014

APR 23 2014

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on September 11, 2012, the Planning Board approved Preliminary Plan No. 120120080, for a maximum of 752 residential townhouse units; a maximum of 1,458 multi-family residential units; 41,828 square feet of retail; and a maximum of 131,422 square feet of office development on approximately 90.34 acres in the TOMX-2/TDR Zone, located along Crabbs Branch Way, south of Shady Grove Road, ("Subject Property"), in the Shady Grove Sector Plan ("Sector Plan") area;

WHEREAS, on March 6, 2014, EYA/CSP Associates ("Applicant") filed a preliminary plan amendment to amend Condition No. 4 and Condition No. 7 (b) of Preliminary Plan No. 120120080; and

WHEREAS, Applicant's preliminary plan was designated Preliminary Plan No. 12012008A, Shady Grove Station ("Preliminary Plan," "Amendment" or "Application"); and

WHEREAS, following review and analysis of the Application by the Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 4, 2014, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on April 17, 2014, Staff presented the Application to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

APPROVED AS TO LEGAL SUFFICIENCY  
*Christina Jones* 4/10/14  
M-NCP&C LEGAL DEPARTMENT

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Preliminary Plan No. 12012008A for the modification to Preliminary Plan No. 120120080 Conditions No. 4 and 7(b), as shown below<sup>1</sup>:

Condition No. 4

The Applicant must satisfy the Shady Grove Sector Plan's traffic mitigation requirements by entering into a Traffic Mitigation Agreement with the Planning Board and MCDOT. In the Agreement, the Applicant must agree to participate in the Greater Shady Grove Traffic Management Organization (TMO) to assist in achieving the non-auto-driver mode share goals of the Sector Plan. As a new development generating 100 or more additional new peak-hour vehicular trips in the Shady Grove Metro Station Policy Area, the non-auto-driver mode share goals are a reduction of 65% of the employees' vehicular trips and 50% of the residential vehicular trips. The Agreement must be executed prior to approval of the first building permit for a residential building.

Condition No. 7 (b)

Road P and Road I in the Shady Grove Station West area may be private streets subject to the following requirements:

- b. The design of the roads shall correspond to the Montgomery County Road Code standard (2005.02 modified) for a similar public road, as modified in the cross-sections contained in the Preliminary Plan, or as shown on the certified site plan.

BE IT FURTHER RESOLVED, that all other conditions of approval for Preliminary Plan No. 120120080 remain valid, unchanged and in full force and effect;

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, that unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, as amended, and all findings not specifically addressed remain in effect, and with the conditions of approval, that:

---

<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

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

This Amendment does not materially change the existing approvals for uses and development. The Amendment remains in conformance with the Sector Plan.

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

The development of the Subject Property continues to be bound to the density and uses approved with the original preliminary plan. The finding of Adequate Public Facilities, including fire and rescue access, roads, water and sewer remains valid for the approved development.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The lots are of the appropriate dimensions with respect to size, shape, width and orientation to accommodate the multiple uses expected to occur on the Subject Property. The Amendment does not change the size, width, shape and orientation of the approved lots, and remains in conformance with all applicable sections of the Subdivision Regulations.

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

The original approval by the Planning Board included provisions to satisfy the requirement of Chapter 22A as shown on the approved preliminary forest conservation plan. The Subject Property continues to be bound by the conditions of the approved forest conservation plan.

5. *The Amendment meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The Montgomery County Department of Permitting Services approved a stormwater management concept for the entire site at the time of the original preliminary plan approval. This Amendment does not change the elements of that concept.

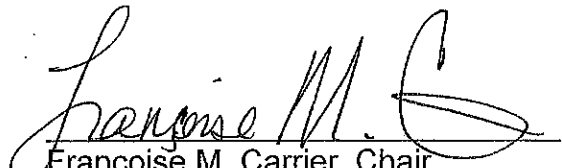
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 23 2014 (which is the date that this resolution is mailed to all parties of record); and

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 Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor, and Commissioner Anderson absent, at its regular meeting held on Thursday, April 17, 2014, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board



**ATTACHMENT C**

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

MCPB No. 13-190  
Site Plan No. 820130220  
Project Name: Shady Grove Station, Westside  
Date of Hearing: January 23, 2014

**FEB 3 2014**

**RESOLUTION**

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on April 9, 2013, EYA/CSP Associates, LLC ("Applicant"), filed an application for approval of a Site Plan for 1,521 residential dwelling units, including 211 Moderately Priced Dwelling Units ("MPDUs") and 116 Workforce Housing units, 41,828 square feet of non-residential (retail) development, and space for a public library, on approximately 41.8 gross acres in the Transit-Oriented Mixed Use/Transferable Development Rights (TOMX-2/TDR) zone, located west of Crabbs Branch Way and south of Shady Grove Road, in the Shady Grove Sector Plan ("Sector Plan") and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820130220, Shady Grove Station, Westside (the "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 January 13, 2014, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on January 23, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves Site Plan No. 820130220 for 1,521 residential dwelling units, including 211 MPDUs and 116 Workforce Housing units, 41,828 square feet of non-residential (retail) development, and space for a public library, subject to the following conditions:<sup>1</sup>

<sup>1</sup> 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.

APPROVED AS TO LEGAL SUFFICIENCY

1/28/14

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan No. 120120080, and any associated amendments.

2. Density

This Site Plan is limited to a maximum of 407 residential townhouses, 1,114 multifamily residential units, 41,828 square feet of non-residential (retail) development, and space for a public library.

3. Affordable Housing

- a. The proposed development must provide 167 multifamily residential dwelling units and 44 townhouses as MPDUs in accordance with an Agreement-to-Build with the Department of Housing and Community Affairs ("DHCA").
- b. The proposed development must provide 91 multifamily residential dwelling units and 25 townhouses as Workforce Housing units.
- c. Prior to the release of any building permits, the Applicant shall execute the MPDU and Workforce Housing agreements.
- d. MPDU and Workforce Housing units will be phased with each multifamily building and row of residential townhouses.

4. Transferable Development Rights (TDRs)

- a. Prior to record plat for each multifamily building, the Applicant must secure TDRs with the following schedule: 19 TDRs for Building A; 18 TDRs for Building B; 15 TDRs for Building C; and 12 TDRs for Building D. The Applicant must reflect serialization and liber/folio references for these TDRs on the applicable record plat(s).

5. Transportation

- a. The Applicant must provide 27 inverted-U bike racks, or an alternative as approved by Staff, in the following locations:
  - i. Eight distributed on the east and west sides of the community building, pool and open play area
  - ii. Four in front of the pocket park
  - iii. Two in front of the HOA community garden
  - iv. Thirteen distributed in front of the main entrances of the four multifamily residential buildings in a weather-protected area, where possible.
- b. The Applicant must provide bicycle storage rooms for at least 20 bicycles in the parking garages of the four multifamily buildings, near an elevator in a well-lit area.
- c. The Applicant must provide a bike sharing station/dock in front of proposed Building B.



6. Environment

- a. The Final Forest Conservation Plan, associated variance, and the Shady Grove Station Public Infrastructure Improvements are approved subject to the following conditions:
- i. Prior to any land disturbing activities, other than demolition of the existing buildings by Montgomery County or related site work, the Applicant must provide a Certificate of Compliance for 8.94 acres of off-site forest banking to satisfy planting requirements for Shady Grove Station-Westside.
  - ii. Prior to the release of the first building permit for Phase I, the Applicant must provide a Certificate of Compliance for 1.55 acres of off-site forest banking to satisfy a portion of the planting requirements for the public infrastructure improvements. This may be combined with the 8.94 acres listed in the above condition for a total off-site banking requirement of 10.49 acres.
  - iii. Prior to the release of the first use and occupancy permit for Phase I, the Applicant must provide nine *Acer rubrum* (red maple) trees along the Metro Access Road as shown on Sheet FCP-11 to fulfill the remainder of the planting requirement for the Public Infrastructure Improvements.
  - iv. Prior to the release of the first use and occupancy permit for Phase I, the Applicant must provide three *Quercus phellos* (willow oak) trees as shown on Sheet FCP-12 to mitigate for the removal of Variance tree #T-51. The three replacement trees must be a minimum of 3" caliper each.

7. Noise

- a. For multifamily Buildings B and C and the residential townhouses that are adjacent to the CSX rail tracks, the Applicant must:
- i. Prior to submission of building permits, provide Staff with certification from an engineer specializing in acoustics that the building shells have been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The Applicant must commit to construct the units in accord with these design specifications, with any changes that may affect acoustical performance to be approved by the engineer and the Staff in advance of installation.
  - ii. Prior to issuance of a Use and Occupancy Permit for each building, provide Staff with certification from an engineer specializing in acoustics that the building shell has been built to the designed specifications to attenuate projected exterior noise. For Buildings B

and C, the Applicant must provide one certification per floor, per building along the CSX tracks. For the townhouses along the CSX tracks, the Applicant must provide one certification per string of townhouses.

- iii. Prior to issuance of Use and Occupancy Permits, install a green screen on the noise wall at the following intersections: Parcel G, Parcel H, Parcel J, Parcel L, Parcel C and Road H. The green screen must be a minimum of 20 feet in width and 15 feet in height.

8. Placemaking Plan

The Applicant must provide public use and open space amenities in accordance with the "Placemaking and Amenity Plan-Shady Grove Station" ("Placemaking Plan") under the following stipulations:

- a. The Applicant must provide Staff with post-construction documentation at each Phase, showing compliance with the Placemaking Plan.
- b. If public art is provided, including at the traffic circle (Roads I, K and P), the Public Arts Trust Steering Committee must review the art proposal and the Placemaking Plan must be amended, as needed.
- c. The Applicant must ensure that all installed site amenities and materials must meet the applicable building codes.

9. Recreation Facilities

At a minimum, the Applicant must provide the following recreation facilities to satisfy the Planning Board's Recreation Guidelines (1992):

- a. One tot lot;
- b. Eight picnic/sitting areas;
- c. One open play area;
- d. One pedestrian system;
- e. Five swimming pools;
- f. Five indoor community spaces;
- g. Four indoor fitness facilities; and
- h. One community garden

10. Maintenance

Maintenance of all on-site Public Use Space is the responsibility of the Applicant and subsequent owner(s). This includes maintenance of paving, plantings, lighting, benches, fountains, and artwork on the Subject Property. Maintenance may be taken over by a governmental agency by agreement with the owner and applicable agency.

11. Architecture

The final exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown on the architectural drawings submitted on September 18, 2013, as determined by Staff.

12. Performance Bond and Agreement

Prior to issuance of the first Core and Shell building permit for each relevant phase of development, the Applicant must provide a performance bond(s) or other form of financial surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. Applicant must provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b. The amount of the bond or surety shall include, as applicable, plant materials, on-site lighting, recreational facilities, site furniture, public art, private roads, and entrance piers within the relevant phase of development.
- c. Prior to issuance of the first building permit, the Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of the General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d. The bond or surety shall be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

13. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Prior to approval of the Certified Site Plan, demolition of existing buildings may commence.
- b. Prior to the release of a Use and Occupancy Certificate for each multifamily building and row of townhouses, street lamps and sidewalks adjacent to that building or row of townhouses must be installed. Street tree planting may wait until the next growing season.
- c. Prior to the release of a Use and Occupancy Certificate for each multifamily building and row of townhouses, on-site amenities adjacent to that building or row of townhouses must be installed, including, but not limited to, recreation amenities and public use space.
- d. Prior to the release of the first townhouse building permit for the final phase of townhouses as indicated in the Applicant's phasing plan, the community building, pool and open play area must be completed.

- e. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to the approval of the Final Forest Conservation Plan, Sediment Control Plan, and Staff inspection and approval of all applicable environmental protection measures and devices.
- f. Phasing for installation of on-site landscaping and lighting.
- g. Phasing of dedications, stormwater management, sediment and erosion control, afforestation, and other features.

#### 14. Certified Site Plan

Prior to approval of the Certified Site Plan and subject to Staff review and approval, the Applicant must:

- a. Provide adequate spot elevations along Roads I, P, and K to ensure ADA accessibility.
- b. Provide six additional benches along Road I.
- c. Provide vines, such as Trumpet Creeper, Purple Passionflower or similar type vines for the green screens on the garages and noise wall.
- d. Include the off-site location for recreation calculations.
- e. Specify the type of materials for the following roadway intersections: Roads K and B; Roads H and K; and Roads I, P and K.
- f. Include the proposed dog park on the landscape plan and site plan.
- g. Include the Final Forest Conservation Plan approval, stormwater management concept approval, development program, inspection schedule, and Site Plan Resolution on the cover sheet.
- h. Add a note to the Site Plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading."
- i. Make corrections and clarifications to recreation guidelines, labeling, data tables, and schedules.
- j. Ensure consistency of all details and layout between site plan and landscape plan.

BE IT FURTHER RESOLVED, that all site development elements are shown on Shady Grove Station, Westside drawings stamped by the M-NCPPC on September 18, 2013, are required, except as modified by the above conditions of approval; and

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 site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an*

*approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

The Site Plan is not subject to a development plan, diagrammatic plan, schematic development plan, or project plan. It is, however, subject to the conditions of Preliminary Plan No. 120120080, Shady Grove Station.

- The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets the development standards of the TOMX-2/TDR zone. The development will utilize parking reductions that are allowed in Section 59-E.3.33(a) and Section 59-E-3.32(a) of the Zoning Ordinance for residential and commercial development, respectively, since the property is within 1,600 feet from the Shady Grove Metro Station entrance.

Based on the following data table, which sets forth the development standards approved by the Board and binding on the Applicant, and based on other evidence and testimony of record, the Application meets all of the applicable requirements of the TOMX-2/TDR zone.

**Data Table**

<b>Development Standards</b>	<b>Required for TOMX/TDR-2 Optional Method</b>	<b>Approved &amp; Binding on Applicant</b>
<u>Minimum Net Lot Area</u> (59-C-13.231)	18,000 sq.ft	41.76 acres
<u>Maximum Building Coverage-percent of net lot area</u> (59-C-13.232)	NA	48% (858,184 sq.ft)
<u>Minimum Public Use Space-percent of net lot area</u> (59-C-13.233)	20%	15.64 % <sup>2</sup>
<u>Maximum Density of Development</u>	2 FAR	1.42 FAR
<u>Maximum Building Heights</u> (59-C-13.235)	NA	70 feet – Multi-family Buildings  50 feet – Townhouses

<sup>2</sup> At least 20% of the net lot area of the entire Shady Grove Station site, as delineated in Preliminary Plan No. 120120080, approved by the Planning Board by Resolution MCPB No. 12-89, shall be devoted to public use space, including the proposed public park on the eastern side of the development.

<u>Minimum Setbacks</u> (59-C-13.236)		
<i>From an adjacent commercial or industrial zone</i>	0	130 feet <sup>3</sup> ; 75 feet <sup>4</sup>
<i>From an adjacent single-family residential zone</i>	0	NA
<i>From a public right-of-way</i>	0	4 feet <sup>5</sup>
<u>Parking</u> (59-E-3.7)		
<i>Townhomes</i>	814	732 <sup>6</sup>
<i>Multi-Family Residential</i>	1,387 <sup>7</sup>	1,179 <sup>8</sup>
<i>Non-Residential</i>	207 <sup>9</sup>	181 <sup>10</sup>

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Locations of buildings and structures

The locations of the buildings and structures are adequate, safe, and efficient as envisioned in the Shady Grove Sector Plan. Taller multi-family residential buildings with ground floor retail and the library are located close to the Metro Station. All of the retail development is located along Road "I" in Buildings "A" and "D". Off-street parking for the multifamily residential buildings is provided in four structured parking garages with each multifamily residential building. All of the residential townhouses front onto a street or a public use space. Service to residential townhouses and multifamily buildings is provided throughout the development's street network.

<sup>3</sup> For Multi-family Residential Buildings "B" and "C"

<sup>4</sup> For residential townhouses that are adjacent to the noise wall.

<sup>5</sup> From Crabbs Branch Way.

<sup>6</sup> Includes a reduction in the required parking for townhouses located in a transit station development area, pursuant to Section 59-E-3.33(a).

<sup>7</sup> Although the Staff presentation reflected 1,385 parking spaces required for the multi-family residential portion of the development, the Board finds, consistent with the Staff report, that 1,387 spaces are required absent a reduction pursuant to Section 59-E-3.33(a).

<sup>8</sup> Includes a reduction in the required parking for multi-family units that are located in a transit station development area and within 1,600 feet of a Metro rail entrance, pursuant to Section 59-E-3.33(a).

<sup>9</sup> Although the Staff presentation reflected 205 parking spaces required for the non-residential (retail) portion of the development, the Board finds, consistent with the Staff report, that 207 spaces are required absent a reduction pursuant to Section 59-E-3.32(a).

<sup>10</sup> Includes a reduction in the required parking for retail uses when the entrances to such uses are within 1,600 feet of a Metro rail entrance, pursuant to Section 59-E-3.32(a).

b. Open Spaces

The locations of open spaces are efficient, safe, and adequate for the redevelopment of the County Service Park as envisioned in the Sector Plan. An urban park, community garden, and smaller public open spaces are provided for recreation and social engagement. In addition to the public open spaces, each multifamily residential building has an internal courtyard and a swimming pool for residents.

c. Landscaping and Lighting

Landscaping and lighting, as well as other site amenities, will ensure that landscaping, lighting, and site amenities will be adequate, safe and efficient for year-round use by employees, visitors, and residents. Site furnishings along Roads "I", "K" and "P," as well as surrounding the urban park and community pool, shade trees, special features, including the community garden and unique design intersections, will be integrated into the site to create a unique place. Street lighting is provided throughout all streets, and lights will be provided on all structures. The Placemaking and Amenity Plan also illustrates that special features, including landscaping and open spaces will be provided.

d. Recreation Facilities

The proposed development exceeds the required supply of recreation facilities based on the calculation methods in the Planning Board's Recreation Guidelines (1992). Through the provision of a tot lot, picnic and sitting areas, an open play area, a pedestrian system, swimming pools, indoor fitness facilities, and a community garden, the proposed development will provide adequate, safe, and efficient facilities for future residents.

Shady Grove Station, Westside will also take advantage of Blueberry Hill Local Park recreational facilities, including:

- 1 Multi-age playground
- 4 Picnic/sitting
- 1 Multi-purpose court
- 1 Tennis court
- 1 Junior soccer field
- 1 pedestrian system

e. Pedestrian and Vehicular Circulation Systems

Several new north-south and east-west private streets (Roads "B", "C", "D", "E", "F", "G", "H", "M", "N", "K", "I", "L", and "P") will provide vehicular and pedestrian

access throughout the development. On-site pedestrian circulation will improve, since all new internal streets will provide sidewalks, some as wide as 11 feet, street furnishings, bike racks, landscaping and on-street parking. Key intersections, such as Roads "I", "P" and "K", are designed with special paving to enhance walking and handicapped access. This network of sidewalks throughout the development will provide adequate, safe, and efficient pedestrian and circulation systems.

Montgomery County is responsible for converting Crabbs Branch Way into an urban boulevard with a landscaped median, on-street parking, sidewalks and shared use paths. The County will also provide off-site pedestrian improvements that link Road "P" to the Shady Grove Metro Station. These improvements are included in the County's Shady Grove Station Public Improvements Infrastructure Plan.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

Shady Grove Station, Westside is compatible with existing uses regarding height, scale, and massing as reflected by the Sector Plan recommendations and the approved Preliminary Plan. Future redevelopment of the eastern portion of Shady Grove Station will provide up to 700 residential units, a four acre public park, and an elementary school site. At the intersection of Shady Grove Road and Crabbs Branch Way, a future office building is proposed. It is not associated with this Plan, but it was approved as part of the Shady Grove Station preliminary plan.

There are no other pending developments in the immediate vicinity.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other law.*

- a. Final Forest Conservation Plan

Minor changes to the development in the site plan phase have reduced the total afforestation and reforestation required for the entire site to 19.37 acres. Of this total, 8.94 acres of afforestation and reforestation are required to be completed for Shady Grove Station, Westside. The planting obligation is to be met with 8.94 acres of forest planting (or 17.88 acres of forest preservation) in an approved off-site forest bank. This leaves an obligation of 10.43 acres remaining for implementation in later phases of the development.

This Final Forest Conservation Plan also incorporates several public infrastructure improvements required to serve the development of Shady Grove



Station, including improvements to Crabbs Branch Way and to the WMATA Metro Station garage entrance, a sewer line extension, and construction of a paved trail around a portion of the Crabbs Branch Regional Stormwater Pond. These Public Infrastructure Improvements, which are covered under Mandatory Referral No. MR2014019, have a net tract area of 4.2 acres not counted in this Site Plan. Impacts from these improvements remove an additional 1.19 acres of forest and result in a mitigation requirement of 1.77 acres of forest planting. The Montgomery County Department of General Services ("DGS") will satisfy the planting requirement with 0.22 acres of landscape credit, to be achieved through the planting of nine *Acer rubrum* (red maple) trees along the Metro garage entrance road, and with 1.55 acres of forest planting (or 3.10 acres of forest preservation) in an approved off-site forest bank. Approval of the Final Forest Conservation Plan for Shady Grove Station, Westside fulfills the Chapter 22A Forest Conservation Law requirements for Mandatory Referral MR No. 2014019.

Prior to any land disturbing activities, other than demolition of the existing buildings by Montgomery County or related site work, the Applicant must provide a Certificate of Compliance for 8.94 acres of off-site forest banking to satisfy planting requirements for Shady Grove Station, Westside. Additionally, prior to the release of the first building permit for Phase I, the Applicant must provide a Certificate of Compliance for 1.55 acres of off-site forest banking to satisfy a portion of the planting requirements for the public infrastructure improvements. The Applicant may submit separate Certificates of Compliance for the Site Plan and Mandatory Referral portions of the development, or the requirements can be met through one Certificate of Compliance totaling 10.49 acres of forest planting (or 20.98 acres of forest preservation) in an approved forest conservation bank.

No on-site Category I Forest Conservation easements are proposed as part of the Final Forest Conservation Plan.

b. Forest Conservation Variance

The Planning Board approved the original tree variance request submitted with the Preliminary Forest Conservation Plan, which allowed the removal of 18 specimen-size trees in the overall Shady Grove Station development. Ten of the specimen-size trees are to be removed for the development of the Shady Grove Station, Westside. The Public Infrastructure Improvements result in the need to remove one additional specimen tree, number T-51. This tree was not approved for removal in the original variance. The following discussion applies to the new variance request for removal of one tree and impacts to five additional trees not covered by the original variance approval.

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention

and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone ("CRZ") requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The Law requires no impact to trees that measure 30 inches or greater, DBH; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on September 24, 2013 for the impacts/removal to trees with the proposed layout. The Applicant proposes to remove one (1) tree that is 30 inches and greater, DBH, and to impact, but not remove, 5 others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

#### **Unwarranted Hardship Basis**

The proposed development is in accordance with both the intent and recommendations of the Sector Plan and the TOMX-2/TDR zone, both of which are intended to create higher density uses in the vicinity of the Shady Grove Metro Station. The western portion of the site, called Metro North-CSP in the Sector Plan, lies closest to the Metro station and is recommended for transformation into an urban village. The combination of an urban scale of development, medium-to-high density residential development, and major public facilities and amenities that further constrain the site means that the entire site will be intensely developed to achieve the vision of the Sector Plan for this area.

Variance tree number T-51 now lies near the center of the limit of disturbance for the sewer line extension required to serve the development. Saving this tree would require a realignment of the sewer line further into the road accessing the Metro garage on WMATA property, causing disruption of the access to the Metro garage.

Trees number T-71, T-72, T-73, T-75 and T-76 lie along the southwestern edge of the Metro garage access road and will be minimally impacted by the construction. These trees will be saved.

Not allowing the removal of Variance tree T-51, and the impacts to Variance trees T-71, T-72, T-73, T-75 and T-76 would require major changes to the development design, which is consistent with the Sector Plan. The Applicant has demonstrated a sufficient unwarranted hardship for the Board to consider a variance request.

### **Variance Findings**

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

*1. Will not confer on the applicant a special privilege that would be denied to other applicants.*

The proposed design has attempted to balance all of the competing factors that constrain the site. While one variance tree will need to be removed, impacts to the other variance trees have been limited and they will be preserved. Given the intensity of the development, impacts to variance trees are unavoidable. Reasonable steps have been taken to minimize impact to variance trees, and granting the variance will not confer a special privilege on the Applicant.

*2. Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is based on the constraints of the site and the proposed development density, public facilities, and amenities as recommended in the Sector Plan, rather than on conditions or circumstances which are the result of actions by the Applicant.

*3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the requirements of the development on the Subject Property and not as a result of land or building use on a neighboring property.

*4. Will not violate State water quality standards or cause measurable degradation in water quality.*

The Montgomery County Department of Permitting Service ("DPS") has approved a final stormwater management concept for the proposed project. The final SWM Concept Plan incorporates a combination of on-site structural water quality treatment facilities and Environmental Site Design practices including micro-scale treatment facilities and alternative surfaces. Runoff in excess of the ESD treatment volume will continue to be treated by the Crabbs Branch Regional pond. The addition of on-site ESD practices should improve the water quality of runoff generated by this site. These measures will not violate State water quality standards or cause measurable degradation in water quality.

### **Mitigation for Trees Subject to the Variance Provisions**

One tree is proposed for removal as a result of the proposed development. Existing policy dictates that replacement should occur at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 34 caliper inches removed, the required mitigation will be 3 native canopy trees with a minimum size of 3" dbh. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. Sheet FCP-12 of the Final Forest Conservation Plan shows the approximate planting locations of the three *Quercus phellos* trees being planted to mitigate the loss of tree #T-51. No mitigation is required for trees impacted but retained.

#### **Stormwater Management**

The final stormwater management concept plan was approved by the DPS on January 8, 2014. The plan proposed to meet stormwater management requirements with Environmental Site Design techniques, including the use of green roofs and micro-bioretenion. This will be supplemented with the use of underground volume based proprietary filters.

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

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; 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 FEB 13 2014 (which is the date that this resolution is mailed to all parties of record); and

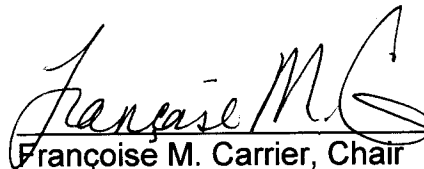
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, January 23, 2014, in Silver Spring, Maryland.

  
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Françoise M. Carrier, Chair  
Montgomery County Planning Board