



AUG -5 2015

MCPB No. 15-101
Preliminary Plan No. 120150130
Chevy Chase Lake
Date of Hearing: July 30, 2015

RESOLUTION

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

WHEREAS, on February 13, 2015, CC Associates, LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 63 lots on 5.4 acres of land in the CRT 2.0 C 0.25 R 2.0 H 100 and CRT 1.5 C 0.25 R 1.5 H 50 zones, located on the north side of Chevy Chase Lake Drive, approximately 510 feet east of the intersection with Connecticut Avenue ("Subject Property"), in the Bethesda/Chevy Chase Policy Area, Chevy Chase Lake Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120150130, Chevy Chase Lake ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 17, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 30, 2015, 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 Preliminary Plan No. 120150130 to create 63 lots on the Subject Property, subject to the following conditions:¹

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

Approved as to
Legal Sufficiency:

 7/23/15

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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- 1) Approval is limited to up to 63 lots with a maximum density of 388,833 square feet of total development, which reflects the exemption of the gross floor area of all MPDUs on a project that provides a minimum of 15% MPDUs, consisting of one lot for up to 200 multi-family dwellings and up to 62 lots for townhouses. Any amount of unused density as determined by the Montgomery County Department of Permitting Services (MCDPS) can be transferred offsite. The multi-family building must include 20% MPDUs and 20% work force housing units (or DHCA-approved equivalent). The townhouse development must include 15% MPDUs.
- 2) The Applicant must comply with the binding elements and conditions of approval for Sketch Plan No. 32014003A and any subsequent amendments.
- 3) The Applicant must comply with the conditions of the approved Final Forest Conservation Plan(s) (FFCP) including, but not limited to:
 - a. Prior to any clearing, grading, or demolition within the project area, the Applicant must submit to Staff and receive M-NCPPC General Counsel's Office approval of a certificate of compliance demonstrating satisfaction of the 1.00 acre total reforestation and afforestation requirement (or as determined by the Final Forest Conservation Plan(s)).
 - b. The FFCP must include at least 130 caliper inches of native canopy mitigation trees.
- 4) Prior to certification of the FFCP(s), the Applicant must correct the variance mitigation tables and associated plan elements to address the following items:
 - a. At least 130 caliper inches of native canopy mitigation trees must be provided on the Subject Property, except offsite Trees 3 and 37 may be mitigated on the properties from which they are removed, assuming the appropriate permission from the landowners is obtained. Otherwise their mitigation shall be provided within the Subject Property.
 - b. Adjust plans as applicable so that all the credited mitigation plantings are at least 5 feet away from any structures, SWM facilities, utility lines, and their associated easements.
- 5) Prior to Certified Site Plan(s) approval, specifications for soil restoration and soil amendments associated with the landscape and lawn areas must be approved by M-NCPPC Staff.
- 6) Prior to Certified Site Plan(s) approval, the tree save plan addressing impacted trees must be prepared by a MD licensed tree care expert who is also an ISA certified arborist.
- 7) Prior to Certified Site Plan(s) approval, the development program must be revised to prohibit construction activity (including clearing and grading), per

Maryland Department of Natural Resources guidelines, during the Yellow-Crowned Night Heron's breeding season, unless timely survey(s) have been performed to ensure that there is no nesting activity within the area of concern.

- 8) The Planning Board accepts the recommendations of MCDPS – Water Resources Section in its stormwater management concept letter dated June 18, 2015, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (MCDOT) in its letter dated June 26, 2015, and does hereby incorporate them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements which are associated with each plat, as required by MCDOT.
- 11) Prior to approval of the first plat associated with this Preliminary Plan, the Applicant must receive Staff approval of a public use and access easement to cover the 60-foot right-of-way of Private Street "A." The easement will be held by Montgomery County, in trust for the public, and must be in a recordable form with the following provisions:
 - a. The Private Street must be located within its own parcel, separate from the development, and must be shown on the record plat;
 - b. Entitlement for open and unobstructed public use of the easement for all customary vehicular, pedestrian and bicycle, and loading access. The easement granted to the public must be volumetric, in order to accommodate uses below and above the street easement area and must accommodate public utility easements;
 - c. Obligation for the Applicant to design and construct the streets pursuant to MCDOT Road Code Standard 2005.01 Modified: Two Lane Business District Street with parking on both sides;
 - d. Obligation for the Applicant to construct the streets pursuant to comparable MCDOT structural construction standards, at the Applicant's expense;
 - e. Obligation to install traffic control devices within the easement area, based on prevailing standards, at the County's request and with the exception of traffic signals, at the Applicant's expense;

- f. Obligation for the Applicant to maintain and repair the streets in acceptable conditions for all access and loading purposes, at its expense;
- g. Obligation for the Applicant to keep the streets free of snow, litter, and other obstructions and hazards at all reasonable times, at its expense;
- h. Entitlement for the Applicant or its designee to close private streets for normal maintenance and repair at reasonable times and upon reasonable prior notice to the public. Closure for recreational purposes, i.e., Block Parties, Parades, Races, etc., must follow MCDOT protocol to include, but not be limited to:
 - i. Signage notifying public of road closures, lane restrictions, or parking restrictions to be in place at least one week prior to closure at locations in accordance with adopted MCDOT standards.
 - ii. Maintain vehicular and pedestrian access to properties abutting closure if possible, and open to emergency vehicle passage at all times.
 - iii. Traffic control devices to be placed in accordance with adopted MCDOT standards.
 - iv. Written notice in accordance with adopted MCDOT standards.
 - v. Written notice to affected civic associations, homeowners associations and businesses in the immediate area two weeks prior to event.
 - vi. Dimensions of signage in accordance with adopted MCDOT standards.

12) Short-term public bicycle parking must be installed near the main residential entrance to the multi-family building and open space. Secure long term private bicycle parking must be installed, internal to the multi-family building, for residents' use. The exact number and location of bicycle parking will be determined at the time of Site Plan.

13) The Applicant must satisfy the Adequate Public Facilities Transportation Policy Area Review (TPAR) test by making a TPAR mitigation payment equal to 50% of the applicable development transportation impact tax to MCDPS at the time of building permit.

14) The certified Preliminary Plan must contain the following note:

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

- 15)The record plat must show necessary easements.
- 16)The final number of MPDUs and Workforce Housing Units as per condition #1 above will be determined at the time of Site Plan(s) approval.
- 17)No clearing or grading prior to FFCP or recording of plats prior to Certified Site Plan(s) approval.
- 18)Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at Site Plan(s).
- 19)Include the stormwater management concept approval letter and Preliminary Plan resolution on the approval or cover sheet(s) of the Certified Preliminary Plan.
- 20)The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the Sector Plan and/or to the design standards imposed by all applicable road codes, including as modified by MCDOT.
- 21)Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the Subject Property frontage on Chevy Chase Lake Drive.
- 22)The record plat must reflect all areas under Homeowners Association ownership and driveway parcels.
- 23)The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant") for all open spaces other than the roughly ½ acre public park. The Applicant must provide verification to Staff prior to release of the final building permit that the Applicant's recorded HOA Documents incorporate the Covenant by reference.
- 24)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(s).
- 25)The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

26) Prior to recordation of any plat, the Applicant must execute a deed of easement and an associated construction and maintenance agreement with the Maryland-National Capital Park & Planning Commission to allow the Montgomery County Department of Parks to use and operate the roughly ½ acre public open space on the Subject Property, as shown on the Site Plan, exclusively as a public park in perpetuity. The foregoing documents must be in a form approved by the Department of Parks and the Commission's Office of the General Counsel. At a minimum, the deed of easement must include the following provisions:

- The easement must: (i) be perpetual and run with the land; (ii) provide the Commission the exclusive right to use and operate the open space as a public park; (iii) restrict the Applicant or any Applicant-controlled party from taking any actions that interfere or are inconsistent with the Commission's use of the easement area as a public park; and (iv) allow the Applicant subterranean and utility use rights.
- The park must be used, operated and policed as a Commission park.
- Public use of the park must be governed in accordance with the Commission's rules and regulations for the operation of its park system, as amended from time to time. Additional rules and regulations, not inconsistent with the Commission's rules and regulations, may be mutually agreed to by Applicant and the Commission.

At a minimum, the construction and maintenance agreement must include the following provisions:

- The park must be constructed and maintained by the Applicant to at least Parks Department standards for Commission parks.
- The Commission must have the right, but not the obligation, to maintain, repair, or replace park improvements and to seek compensation from the Applicant for such actions if the Applicant fails to maintain the park to applicable standards.
- The Applicant must address the issues of insurance and indemnity in a manner satisfactory to the Commission's Risk Management Division and Office of the General Counsel.
- Applicant's duties and obligation must be enforceable against any subsequent assignees and beneficiaries through a mechanism satisfactory to the Department of Parks and the Commission's Office of the General Counsel.

The record plat(s) must depict the location of the public park and include the note: "To be placed under easement for use as a public park." The deed of easement and construction and maintenance agreement must be recorded and effective prior to the issuance of a residential building permit for the multi-family building.

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 Sector Plan.*

The Application is consistent with, and furthers, the recommendations of the 2013 *Chevy Chase Lake Sector Plan*. The Application includes an approximately ½-acre new public open space with attractive amenities that will be designed to Parks Department standards and will be located between the multi-family building and the single-family townhouses. Furthermore, the Applicant will 1) construct the portion of the new master-planned street between Chevy Chase Lake Drive and Manor Road on the Subject Property (Private Street "A"), including sidewalks, street trees, and streetscape pavers as described in the design guidelines, to provide vehicular, pedestrian, and bicycle access to the future Purple Line station, adjacent neighborhoods, and roadways; 2) provide a minimum of 20% MPDUs or HOC affordable units at or below 60% of AMI, in addition to 20% WFHUs up to 100% of AMI included in the multi-family building; and 3) include a minimum of 15% MPDUs for the single-family townhouses.

The Application is consistent with the Sector Plan's recommendation to encourage more housing, especially affordable dwelling units. The Preliminary Plan promotes the Sector Plan objective of reducing auto dependence by integrating a combination of housing types near transit options, such as WMATA Metrobus service and the future adjacent Purple Line station, and near neighborhood retail, businesses, public facilities, and recreational amenities. The Application's inclusion of advanced ESD, such as vegetated roofs, micro-bioretenion facilities, silva cells, and stormwater management vaults, will enhance Chevy Chase Lake's natural environment, and promote the health of stream valleys, including Coquelin Run, by controlling runoff and mitigating negative environmental impacts. Lastly, the Preliminary Plan provides access to shared roadways and shared use paths recommended in the Sector Plan.

Density and Building Height

Pursuant to Section 59-4.7.3.D.6.c.i of the Zoning Ordinance, which provides that the height limit of the applicable zone and master plan do not apply to the extent

required to provide MPDUs, the Applicant requests to modify the multi-family building height to up to 112 feet in height. Specifically, Section 59-4.7.3.D.6.c.i of the Zoning Ordinance contains a formula for determining the additional height, which is the floor area provided for MPDUs above 12.5% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet. Applying this formula to the development results in an additional 12 feet of building height. This additional building height is necessary to accommodate more spacious multi-family MPDUs, especially scarce and sought-after 3 bedroom units for larger families. The resulting densities substantially conform to the Sector Plan's recommendations for density and height. The multi-family building will be up to 112 feet in height and the townhouses will be up to 50 feet, which is consistent with the Sector Plan building height recommendations. The structures step down in building heights away from Connecticut Avenue along Chevy Chase Lake Drive to create an appropriate transition from commercial areas to established residential neighborhoods.

Transportation Network

The Applicant will construct the new street, Private Street "A", (B-1) which is located along the western edge of the Subject Property in a parcel subject to a public access easement, under the conditions specified in the Sector Plan. Private Street "A" will be a segment of a new local business district street recommended in the Sector Plan that will enhance connectivity by linking Chevy Chase Lake Drive with Manor Road (P-14), providing access to the planned Purple Line light rail station, and serving as a shared roadway for bicycles as recommended in the Sector Plan. Bicycle traffic will be accommodated along Chevy Chase Lake Drive and Private Street "A" as shared roadways, as recommended in the Sector Plan. The streets are consistent with Sector Plan recommendations and conform to the Design Guidelines for the Chevy Chase Lake Sector Plan.

Public Use

The public use spaces are consistent with the Sector Plan recommendations. The Sector Plan recommends a new Neighborhood Green Urban Park, to be located on the eastern portion of the Subject Property. It must be at least ½-acre and designed per Parks Department standards. The Project includes an approximately ½-acre new public open space located between the planned multi-family building and the single-family townhouses.

Environment

The Sector Plan contains several recommendations to preserve and restore environmental features while minimizing the impact of future development including expanding the existing tree canopy and promoting sustainable site and building design to mitigate negative environmental impacts. The Application

illustrates vegetated areas throughout the Subject Property and a vegetated roof on the multi-family building along with micro-bioretenion facilities (Silva Cells and planter boxes). The Sector Plan also recommends maximizing tree cover for new development with overall goals of 25 to 30 percent tree canopy in the Chevy Chase Lake Center area, which the Application supports.

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

Roads and Public Transportation Facilities

Access to the Subject Property for all transportation modes is via Chevy Chase Lake Drive. Pedestrian and bicycle access to the Subject Property will be maintained along the Property's frontage sidewalk and public roadway. Resident parking is proposed to be contained within both single-family residential dwelling unit garages and a structured parking facility within the multifamily residential building. Public on-street parking, along the entirety of the project's Chevy Chase Lake Drive frontage will be eliminated to narrow the roadway by the width of the westbound parking lane (eight feet). As a result of this reconfiguration, Chevy Chase Lake Drive will operate with two travel lanes and a single parking lane along the south (eastbound) side of the roadway.

As a roadway within a 60 foot-wide right-of-way, Chevy Chase Lake Drive is considered to have a Secondary Residential functional classification and is restricted by Montgomery County Code to no more than 200 residential dwelling units. Although the subject application proposes more than 200 dwelling units (200 multifamily and 62 townhouses), development density accessed from Chevy Chase Lake drive east of Private Street "A" will remain below 200 dwelling units and will, in fact, decrease by six dwelling units from the existing condition. The remaining development density of 200 dwelling units will be accessed directly from Private Street "A," a business district street within a 60 foot-wide right-of-way. West of Private Street "A", Chevy Chase Lake Drive serves as a primary roadway and provides access to both commercial and residential uses.

The Applicant will construct Private Street "A", a master-planned business district roadway, along the western edge of the Subject Property. This roadway will be entirely contained within a separate 60 foot-wide parcel subject to a public access easement, under the conditions specified in the Sector Plan. Private Street "A" will be a segment of a new local street (B-1) recommended in the Sector Plan that will enhance connectivity by linking Chevy Chase Lake Drive with Manor Road (P-14), providing access to the planned Purple Line station, and serving as a shared roadway for bicycles as recommended in the Sector Plan.

Vehicular access to the multi-family building parking garage is proposed directly off of Private Street "A", approximately 230 feet north of Chevy Chase Lake Drive. The townhouse units will be accessed from Chevy Chase Lake Drive via four double-loaded private alleys, each of which will terminate in a dead-end along the north side of the Subject Property. The private alleys will each provide access to approximately 15 townhouses. Internal pedestrian and bicycle circulation will be accommodated by the frontage sidewalk, pathways through the proposed open space, and pedestrian mews associated with each row of townhouses.

Bicycle accommodation will be provided along Chevy Chase Lake Drive and Private Street "A" as shared lanes, in accordance with the Sector Plan recommendations. Pedestrian circulation to the Subject Property will be provided by sidewalks along Chevy Chase Lake Drive and Private Street "A," pathways in the central open space area, and pathways to the multi-family buildings lobby and to each of the individual townhouses. The proposed circulation pattern is consistent with the Sector Plan recommendations for a new street and pedestrian connections to the Purple Line Station.

Transit within the immediate area includes the WMATA Metrobus L8 route on Connecticut Avenue. Future transit in the area includes a proposed Purple Line station at the intersection of the Connecticut Avenue and the Capital Crescent Trail.

LATR/TPAR

A traffic study (dated December 2014) was submitted for the Application per the Local Area Transportation Review ("LATR")/Transportation Policy Area Review ("TPAR") Guidelines since the development was estimated to generate more than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

A site trip generation summary for the development, provided in Staff Report, shows that the Application will generate 99 peak-hour trips during the weekday morning peak period and 131 peak-hour trips during the weekday evening peak period. When compared to existing uses (less those identified for removal through this application), the Preliminary Plan will result in an increase of 69 peak-hour trips during the morning peak period and 98 peak-hour trips during the evening peak period.

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis for the weekday morning and evening peak-hour periods at the nearby Connecticut Avenue/Chevy Chase Lake Drive intersection, presented in the Staff Report, shows that at full site buildout, congestion at the intersection will remain within the policy area congestion standard of 1,600 CLV. Based on the analysis

presented in the traffic study, the subject application satisfies the LATR requirements of the APF test.

As a development within the Bethesda Chevy Chase Policy Area, the Application is determined to be "inadequate" under both the TPAR transit and roadway tests of the 2012-2016 *Subdivision Staging Policy*. As a result, the Applicant must satisfy the TPAR test by making a TPAR mitigation payment equal to 50% of the applicable development transportation impact tax to the Montgomery County Department of Permitting Services at the time of building permit.

Other Public Facilities

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

3. *The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the lots are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. The Application substantially conforms to the 2013 *Chevy Chase Lake Sector Plan*. The Application complies with the specific density recommendations for the site as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Preliminary Plan, the site is sufficiently large to efficiently accommodate the mix of uses.

Under Section 59-4.5.4 of the Zoning Ordinance, the dimensional standards for the lots will be determined with approval of the subsequent site plans.

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

A. Forest Conservation

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

A Natural Resource Inventory Forest Stand Delineation (NRI/FSD) was approved for the project on December 26, 2014. The plan (# 420141600) identifies the existing man-made and natural features associated with the garden apartments and the surrounding area. The Coquelin Run stream runs parallel to the site on the south side of Chevy Chase Lake Drive (opposite side of road from the Property). There are Stream Valley Buffers (SVBs) that extend into the Subject Property along portions of Chevy Chase Lake Drive and also at the northwest corner of the site. The total area of onsite SVB is approximately 0.50 acres.

The Maryland Department of Natural Resources (MD DNR) issued a letter on May 29, 2014, indicating that the project site is near a colony of Yellow-Crowned Night Herons (*Nyctanassa violacea*) documented along Coquelin Run. A condition of approval requires the development program to be revised to prohibit construction activity, including clearing and grading, per Maryland Department of Natural Resources guidelines, during the Yellow-Crowned Night Heron's breeding season, unless timely surveys are performed to ensure that there is no nesting area with the area of concern.

The Sector Plan supports stream restoration projects that, among other things, stabilize banks and prevent further erosion. A condition of approval requires offsite stream restoration and removal of invasive species. The final scope, location, and details of the offsite restoration plans must be shown on the Final Forest Conservation Plan(s) and approved by Staff prior to certification of the Certified Site Plan.

The Application will clear all of the onsite forest measuring 0.15 acres, along with minor areas of offsite forest clearing (0.04 acres), resulting in an overall of 0.19 acres of forest removal. The reforestation/afforestation requirements for the project total 1.00 acres, which will be addressed by providing an equivalent amount of credits in an offsite forest conservation bank. Onsite mitigation consisting of large caliper native canopy tree plantings will be provided for the removal of certain vegetation subject to a variance, as discussed below.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected

Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 35 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made 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 Subject Property is located adjacent to a planned mass transit station where increased density is highly recommended. Furthermore, the Sector Plan specifically recommends the redevelopment of the site. Because the Variance is necessary for the reasonable development of the Subject Property, the Variance request would be granted to any applicant in a similar situation.

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

The requested Variance is based on proposed development allowed under the existing zoning and Sector Plan, along with the need to provide the required utility connections, rather than conditions or circumstances that are the result of the Applicant’s actions. As conditioned, the Application avoids or minimizes impacts to the extent practicable and provides necessary mitigation.

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

The requested Variance is a result of the current Application on the Subject Property and is not related to land or building use on a neighboring property.

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

MCDPS approved the stormwater management concept for the Application on June 18, 2015. The stormwater management concept proposes to meet required stormwater management goals by the use of a green roof and micro-bioretenion (Silva Cells and planter boxes).

Although DPS granted the Applicant a waiver of stormwater quantity for the entire Subject Property, the Application decreases, the 10 year discharges by 8% over the existing conditions. The MCDPS review and ultimate approval of the sediment and erosion control and stormwater management plans will ensure that appropriate standards are met. The offsite stream projects to be implemented by the Applicant to stabilize banks and prevent further erosion will further benefit water quality. The soil restoration techniques to be implemented at the end of construction will maximize the permeability of the soil helping to further reduce runoff. The replanting of mitigation trees will also help water quality goals by providing shading and water retention and uptake. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately one inch of caliper for every four inches DBH removed, using trees that are a minimum of three-inch caliper. No mitigation is required for Protected Trees impacted but retained.

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

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

The MCDPS Stormwater Management Section approved the stormwater management concept on June 18, 2015. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent possible through the use of a green roof and micro-bioretenion (silva cells and planter boxes). A waiver of quantity for the entire site was granted.

BE IT FURTHER RESOLVED, that Phase 1 of this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), that Phase 2 of this Preliminary Plan will remain valid for 60 months

from the expiration date of the Phase 1 validity period, and that prior to the expiration of these validity periods, a final record plat for all property delineated in each respective phase of the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

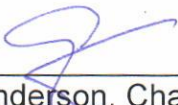
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG -5 2015 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Presley and Fani-González voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, July 30, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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