



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

February 12, 2013

RECEIVED  
2/14/13

MEMORANDUM

TO: Whom it may concern

FROM: MNCPPC  
Development Applications and Regulatory Coordination

RE: Re-mailing of Planning Board Resolution – Mallory Square Preliminary Plan

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Enclosed please find the above-referenced Planning Board Resolution for Preliminary Plan No. 120120180, Mallory Square which is being re-mailed because the previously sent copy had been formatted such that condition #8 of the Board's adopted resolution was inadvertently left off.



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

MCPB No. 12-137  
Preliminary Plan No. 120120180  
Mallory Square  
Date of Hearing: January 24, 2013

FEB 14 2013

**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 June 20, 2012, Woodfield/Meridian Shady Grove, LLC. ("Applicant"), filed an application for approval to record two new lots and one outlot, for a maximum of 800,000 square feet of development to allow construction of two new buildings of up to 796,500 square feet of multi-family residential use, with up to 682 units, including a minimum of 13.63% moderately priced dwelling units ("MPDUs"), and up to 3,500 square feet of retail uses on approximately 12.81 acres of land in the CR1.5 C1.5 R1.5 H100 zone, located in the southeast quadrant of the intersection of Omega Drive and Research Boulevard ("Subject Property"), in the Life Sciences Center North District of the Great Seneca Science Corridor Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120120180, Mallory Square ("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 January 11, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 24, 2013, 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 January 24, 2013, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley, seconded by Commissioner Anderson, with a vote of 4-0; Commissioners Anderson, Carrier, Dreyfuss and Presley voting in favor, with Commissioner Wells-Harley being absent.

Approved as to  
Legal Sufficiency

*Christina Swartz / Carol Rubin 1/24/13*  
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NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 120120180 subject to the following conditions:<sup>1</sup>

1. Approval is limited to two lots and one outlot with a maximum density of 800,000 square feet of total development, which includes up to 796,500 square feet of residential uses with up to 682 multi-family units, including a minimum of 13.63% MPDUs, and up to 3,500 square feet of retail uses. (Non-residential floor area may be increased to 7,000 square feet with Staff approval as long as the total density remains the same and capacity is available under GSSC Master Plan staging).
2. The Applicant must dedicate, and the record plat must reflect the Master Plan recommended 200-foot right-of-way (100 feet from centerline along the Subject Property frontage) for Key West Avenue (MD 28).
3. The Applicant must dedicate, and the record plat must reflect the Master Plan recommended 100-foot right-of-way (50 feet from centerline along the Subject Property frontage) for Omega Drive.
4. The Applicant must dedicate, and the record plat must reflect the right-of-way for B-9 as shown on the Preliminary Plan.
5. The Applicant must dedicate, and the record plat must reflect the right-of-way for B-10 as shown on the Preliminary Plan.
6. The Applicant must construct B-9 that crosses through the site. The Applicant must work with the Maryland State Highway Administration ("SHA") regarding the existing and future permitted turning movements from B-9 at its intersection with Key West Avenue considering the status of the opposite curb cuts and Key West Avenue's median.
7. The Applicant must enter into a covenant accepting responsibility for future construction costs equal to its prorata share for the cost of B-10. The prorata share will be determined by the Montgomery County Department of Transportation ("MCDOT") at the time that B-10 is constructed. B-10's construction must include closing the existing curb-cut from Key West Avenue and providing an alternative set of curb-cuts along the east side of B-10 into the parking area serving the adjacent property owner as shown on the "Street B 10 Grade Establishment Plan Sta. 0+00 to Sta. 5+10.43" prepared by VIKA Maryland, LLC and dated August 2012. These access points and movements must be approved by MCDOT and Montgomery County Fire and Rescue at the time of construction of B-10. The Applicant must work with SHA regarding the existing and future permitted turning movements from B-10 at its intersections

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<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.

with Key West Avenue considering the status of the opposite curb cuts and Key West Avenue's median.

8. The Applicant must accommodate within the proposed reduced-width right-of-way of 64 feet for B-10, all the required cross-sectional design elements.
9. At the time that B-10 is constructed, the Applicant or its designee must prepare and submit a traffic signal warrant study to MCDOT for a possible installation at the intersection of B-10 and Research Boulevard. If warranted, the Applicant or its designee must pay MCDOT a pro-rata share of the cost to install the traffic signal, which pro-rata share shall be determined in the same manner as Applicant's cost for B-10 as set forth in Condition No. 7.
10. The Applicant must satisfy the Policy Area Mobility Review ("PAMR") test to mitigate 44 new peak hour trips by providing for transportation infrastructure improvements within the R&D Village Policy Area as follows:
  - a. Contributing to MCDOT a maximum of \$351,000 (or \$11,700 times the first 30 new peak-hour trips) for unidentified transportation infrastructure improvements. The PAMR payment must be made prior to issuance of any use and occupancy permit.
  - b. Constructing at least \$163,800 (or \$11,700 times 14 new peak-hour trips) worth of off-site transportation-related improvements that may include the off-site Local Area Transportation Review ("LATR") intersection improvements required as part of this approval. The improvements must be under permit and bond by the Montgomery County Department of Permitting Services ("DPS") prior to issuance of any building permit.
11. The Applicant must satisfy the LATR test by providing the following off-site intersection improvements:
  - a. Reconfigure the left-most through lane to be a second left-turn lane on southbound Omega Drive at the intersection with Key West Avenue (MD 28).
  - b. In coordination with the City of Rockville, restripe the right-most through lane to be a combined second right-turn and through lane from westbound Research Boulevard onto northbound Shady Grove Road.
12. The Applicant must enter into a Traffic Mitigation Agreement with MCDOT and the Planning Board to participate in the Greater Shady Grove Transportation Management District ("TMD") and assist the Transportation Management Organization ("TMO") in achieving the 2010 *Great Seneca Science Corridor Master Plan's* Stage 2 non-auto driver mode share goal of 18%. The Traffic Mitigation Agreement must be executed prior to the release of any residential building permit.
13. The Applicant must clearly designate and separate visitor parking spaces from residential parking within each garage such that residents are restricted from parking in visitor spaces.
14. The Applicant must accommodate the master-planned "signed shared roadway" on Omega Drive along the property frontage by widening the outside lane to 14

feet if the outside lane is not already 14 feet wide, unless an alternative is accepted by MCDOT. The County will stripe or designate the signed shared roadway when functional.

15. The Planning Board has accepted the recommendations of the MCDOT in its letter dated October 25, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, 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.
16. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
17. The Planning Board has accepted the recommendations of SHA in its letter dated August 27, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by SHA provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
18. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by SHA.
19. The Planning Board has accepted the recommendations of DPS stormwater management concept approval letter dated July 6, 2012, and hereby incorporates them as conditions of the Preliminary Plan approval. Therefore, the Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by DPS provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
20. The Subject Property is located in the Gaithersburg High School Cluster. The Applicant must make a School Facilities Payment to DPS at the elementary and middle school levels. The Applicant will be required to pay at the "highrise/low-rise with/structured parking" residential unit rate for all units for which a building permit is issued and a School Facilities Payment is applicable. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code.
21. The Applicant must comply with the final forest conservation plan as approved with the site plan.
22. Except for demolition of the existing structure, no clearing and grading of the site or recording of plats prior to certified site plan approval.
23. Final approval of the number and location of buildings, dwelling units, on-site parking, and site circulation will be determined at site plan.
24. In the event that a subsequent site plan approval substantially modifies the subdivision shown on the Preliminary Plan with respect to lot configuration or right-of-way location, width, or alignment, the Applicant must obtain approval of a Preliminary Plan amendment prior to certification of the site plan.

25. 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."
26. All necessary easements must be shown on the record plat.
27. 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.

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.*

Master Planned Right-Of-Way B-10

B-10, or Road "I", is a recommended 70-foot-wide right-of-way. B-10 is shown in the Master Plan as connecting Research Boulevard and Key West Avenue and is shown relatively close to the existing property lines of the Subject Property and the adjoining Tech Center Associates property. For this type of scenario, when possible and practical, applicants have been required to locate the centerline of a right-of-way in a way that adjoining properties will share equal responsibility in dedication and construction, if or when they develop.

At the adjoining property owner's request, the Applicant is providing full dedication of B-10 on the Subject Property, creating an outlot (Outlot A) to be paved and striped for parking. Title to Outlot A will be retained by the Applicant, subject to an easement in favor of the adjoining property owner to the east of Outlot A. When B-10 is constructed between Key West Avenue and Research Boulevard, the existing curb-cut from Key West Avenue must be closed, and an alternative set of one-way curb-cuts must be provided along the east side into the proposed parking area to serve as access from B-10 for the adjacent property owners.

The Planning Board approves Applicant's request that B-10 be dedicated as a 64-foot-wide right-of-way instead of the 70 feet identified by the Master Plan. The proposed 64-foot-wide right-of-way can still accommodate the cross section that was envisioned by

the Master Plan except for additional space for a small green panel that was envisioned. The Applicant will provide numerous plantings and open space adjacent to the B-10 right-of-way, which acts as the green panel that would otherwise be missing. No travel lanes will be reduced as part of the reduction in right-of-way width.

Due to the lower traffic volumes expected on B-10, the interchange at the intersection of Shady Grove Road and Key West Avenue, as recommended by the Master Plan, the likelihood that SHA will not allow a median break in Key West Avenue, and the plantings and open space that will substitute for the small green panel that was envisioned, the Planning Board accepted the Applicant's proposal to reduce the right-of-way to 64 feet with the condition that all the required cross-sectional design elements can be accommodated with the reduced right-of-way.

Since B-10 would have typically been located half on the Subject Property and half on the adjoining property, the Planning Board is requiring the Applicant to enter into a covenant for future construction of their prorata share of B-10, which is consistent with the MCDOT requirement.

#### General Recommendations

The project is located within the North District of the Life Science Center ("LSC") of the Great Seneca Science Corridor ("GSSC") Master Plan area. The Master Plan provides the following general applicable recommendations for the Subject Property including:

- Transform the LSC into a dynamic live/work community while ensuring growth opportunities for research, medical, and bioscience interests;
- Create the LSC Loop as the organizing element of the open space plan to connect districts and destinations, incorporate natural features, and provide opportunities for recreation and non-motorized transportation;
- Create a sustainable community that will attract nationwide interest with design and materials that minimize carbon emissions, maximize energy conservation, and preserve water and air quality; and

There is a shortage of housing in the Master Plan area, and the Application, which will be near a planned Corridor Cities Transitway ("CCT") station, will add to the housing stock at a strategic and convenient location in the LSC. The proposed pedestrian linkages will tie into the overall LSC pedestrian circulation system, as well as the LSC Loop recreational trail.

Six objectives are elucidated on pages 15-16 of the Master Plan to help implement the Plan's vision. The following two are applicable for the Subject Property:

- Mixed-use development is emphasized; single purpose or free-standing retail buildings are inconsistent with the Plan's vision in any phase of development.

- Structured parking should be hidden from the street; although surface parking is inconsistent with the Plan's vision, it is anticipated and acceptable on an interim basis.

The proposed development is a mix of residential and retail uses, and the two parking garages are contained within the interior of the proposed buildings and hidden from the street as the Master Plan recommends.

#### *Climate Protection and Sustainability*

The Master Plan lists goals for climate protection and sustainability. Specifically the Master Plan envisions a standard for sustainability that reflects the LSC's cutting edge science (page 25), and makes a number of recommendations to reduce development's carbon footprint (page 29). These recommendations include site and building design and orientation that takes advantage of passive solar heating and lighting and passive cooling opportunities and commitments to reduce energy and water consumption.

The Applicant will address these climate goals at site plan.

#### *Housing*

The Master Plan encourages the provision of housing to improve the area's job-housing balance. The Master Plan recommends a range of housing options to help meet County housing goals, including Moderately Priced Dwelling Units and workforce housing (page 23). The Application includes a minimum of 13.63% MPDUs.

#### *Staging Considerations*

According to the Master Plan, converting from non-residential to residential development is exempt from the Master Plan's staging requirement, as long as the residential project does not increase the number of already approved vehicle trips. As stated on page 77 of the Master Plan:

"The 3.7 million square feet of development in the pipeline is not subject to the Plan's staging requirements unless a project's Preliminary Plan expires. The owner of a property approved for commercial development may re-subdivide and convert to residential development and still be exempt from staging provided that the change in development will not increase the number of vehicle trips."

The Applicant is converting the existing 115,858 square feet of commercial uses into 3,500 square feet of retail uses and 796,500 square feet of residential uses, which includes 682 multi-family units. The amount of new commercial capacity that was available in stage one has been requested and allocated by previous approvals. Therefore, no new commercial capacity is available for the retail portion of the proposed development. Therefore, the Applicant is first subtracting the 3,500 square feet of existing commercial uses to cover the retail portion of the development. This leaves



112,358 square feet of commercial uses to convert to residential uses as permitted by the Master Plan. The 112,358 square feet of commercial uses equates to 371 multi-family units. Thus, 371 of the 682 residential units will be exempt from the residential staging requirements of the Master Plan, and only the "new" 311 will count against the Master Plan stage one limit of 2,500 dwelling units.

#### Site Specific Recommendations

The Master Plan has the following recommendations that are specific to the Subject Property on pages 48 and 49:

- Encourage mixed-use infill for the Bureau of National Affairs (BNA) site;
- Rezone BNA property from O-M Zone to CR Zone – CR1.5 C1.5 R1.5 H100;
- Residential uses are encouraged, as are pedestrian-oriented local retail facilities that are compatible with and provide convenience for residents;
- Public benefits that improve connectivity and mobility or add to the diversity of uses and activity are encouraged;
- The sidewalk and pedestrian improvements as shown, with final locations to be determined at Site Plan review;
- 100-feet of right-of-way for Omega Drive;
- 200-feet of right-of-way for Key West Avenue; and
- Dedication of master planned business district streets B-9 and B-10.

The Applicant is providing a mixed-use development on the Subject Property. The proposed development is primarily residential, which addresses the need for residential units in the area, and a small amount of retail is also proposed to provide local retail that is convenient for residents. The Applicant is providing the dedications for Key West Avenue, Omega Drive, B-9, and B-10 as required.

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

#### Site Location and Vehicular Site Access Points

The Subject Property is located in the northeast quadrant of Key West Avenue and Omega Drive/Medical Center Drive. Vehicular access points to the proposed multi-family buildings and parking garages onsite will be provided from B-9. Each building will have a semicircular driveway that connects with B-9.

#### Transportation Demand Management

The Applicant must participate in the TMD and assist the County in achieving and maintaining the 2010 Great Seneca Science Corridor Master Plan's Stage 2 non-auto driver mode share goal of 18% and the ultimate goal of 30%. The Master Plan does not explicitly differentiate between vehicular trips generated by residents and employees nor limits participation with the TMD to only non-residential developments.

### Public Transit Service

Ride On bus service is available from the adjacent and nearby roadways as follows:

- Research Boulevard: Ride On routes 55 and 66;
- Key West Avenue and Shady Grove Road: Ride On route 43;
- Omega Drive: RideOn route 74.

### Master-Planned Roadways and Bikeways

In accordance with the 2010 *Great Seneca Science Corridor Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, the master-planned designated roadways and bikeways are as follows:

- Key West Avenue is designated as a six-lane major highway, CM-22, with a recommended 200-foot-wide right-of-way and a dual bikeway (bike lanes and a shared use path on the north side), DB-43. The Applicant must dedicate additional right-of-way for a total of 100 feet from the centerline as shown on the revised submitted plans dated August 15, 2012.
- Omega Drive is designated as a four-lane arterial, A-261a, with a recommended 100-foot-wide right-of-way, and a local dual bikeway (bike lanes and a shared use path on the west side), LB-1. The outside lane of Omega Drive must be widened to be 14 feet wide to accommodate the master-planned bike lane along the property frontage.
- Research Boulevard is a four-lane industrial road, I-8, with a recommended 80-foot-wide right-of-way and no bikeway.
- B-9, or Road "H" with a recommended 60-foot-wide right-of-way and no bikeway. B-9 must be dedicated and constructed between Key West Avenue and Research Boulevard.
- B-10, or Road "I" with a recommended 70-foot-wide right-of-way and no bikeway. B-10 must be dedicated and the Applicant must enter into a covenant for future construction of half of B-10.

### Bus Rapid Transit and Corridor Cities Transitway

One of the 16 candidate "Countywide Bus Rapid Transit Study" options is Route 5, "Rockville Metrorail-Life Science Center Option" that proposes transit vehicles operating along Key West Avenue and alternatively along Research Boulevard.

The Maryland Transit Administration's preferred alignment of the CCT is not along the adjacent roadways. Near the subject site, a CCT station is proposed on the west side of Diamondback Drive just north of Key West Avenue.

### Pedestrian and Bicycle Facilities

A 5-foot-wide sidewalk exists along the Omega Drive frontage. A shared-use path that accommodates both pedestrians and bicyclists exists along the Key West Avenue frontage. Where needed, these existing facilities must be improved by this development. The Applicant proposed a 6-foot-wide sidewalk along the Research Boulevard frontage and 5-foot-wide sidewalks along B-9.

#### Local Area Transportation Review ("LATR")

The Applicant submitted a traffic study to satisfy the LATR test because the proposed redevelopment generates 30 or more total peak-hour trips within the weekday morning and evening peak hours.

Based on the CLV values provided in the Applicant's traffic study, two intersections require improvements:

1. At Omega Drive-Medical Center Drive and Key West Avenue, reconfigure the left-most through lane on Omega Drive to be a second left-turn lane on southbound.
2. At Research Boulevard and Shady Grove Road, restripe the right-most through lane on westbound Research Boulevard to be a combined second right-turn and through lane.

These improvements will reduce the CLV values in the total improved traffic condition below their congestion standards or the CLV value in the background traffic condition. With the improvements required to these two intersections, the Planning Board finds the LATR test is satisfied.

#### Policy Area Mobility Review

Under the Subdivision Staging Policy when the Preliminary Plan was filed, the PAMR test requires the Applicant to mitigate 30% of the 147 (i.e., equal to 44) new peak-hour trips generated by the proposed redevelopment within the weekday morning and evening peak hours. With the improvements and required payment as conditioned, the Planning Board finds the Application satisfies the PAMR test.

#### Other Public Facilities and Services

The proposed development will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the Subject Property has appropriate access for fire and rescue vehicles. Other public facilities and services including police stations, firehouses and health care are currently operating in accordance with the Subdivision Staging Policy and will continue to be sufficient following the construction of the project. Electric, gas and telecommunications services will also be available and adequate. The required school facilities payment will be made to DPS.

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

The size, shape, and width of the approved lots allow the development to meet the Master Plan goals to provide a more urban and walkable community while providing much needed residential development. Further, the lots are designed in such a way to meet all other requirements of the Subdivision Regulations, including access, frontage, dedication for public uses, adequacy of public facilities and conformance to Master Plan recommendations. The lots have been reviewed for compliance with the Montgomery County Code, Chapter 50-29(a) of the Subdivision Regulations, and Chapter 59, the Zoning Ordinance.

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

#### Environmental Inventory

The Property is located within the Muddy Branch watershed, which has a State Use Class designation of I-P and is not within a Special Protection Area.

The site is developed with an existing two story commercial building with associated parking to the east and in the central portion of the site, and a stormwater management pond located in the northwestern corner of the site. The remaining areas of the site consist of an open non-maintained field and a 0.45 acre forest stand in the northwestern portion of the site as depicted on the approved Natural Resource Inventory/Forest Stand Delineation (#420111560) approved by Staff on April 25, 2011. The site contains no streams, stream valley buffers, wetlands, wetland buffers, or known occurrences of rare, threatened, or endangered species. Three Protected Trees (as herein defined) are located within the central and north-central portions of the site, and are proposed for removal.

#### Forest Conservation Plan

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A), and a Final Forest Conservation Plan ("FFCP") has been submitted for Planning Board approval. The Applicant proposes the removal of all onsite existing forest, which generates 2.48 acres of reforestation and afforestation requirements. Given the intensity of the development proposed for the site, the design constraints of the site including the locations of stormwater management facilities, the tree canopy coverage for public benefit, and the required on-site mitigation for Protected Tree impacts, the Planning Board has accepted planting requirements to be satisfied off-site in a forest mitigation bank.

#### Forest Conservation Variance

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

The Applicant submitted a Variance request on June 20, 2012 to remove 3 Protected Trees.

*Unwarranted Hardship Basis*

The development is in accordance with both the intent and recommendation of the Master Plan and the CR Zone, both of which are intended to create higher density uses in the vicinity of the CCT. Protected Trees identified on the FFCP as 4v, 10v, and 13v are located in the central and north-central portions of the site closest to Research Boulevard. This area is envisioned to become an urban area with buildings oriented and as close to streets as possible. Reconfiguring a building around the Protected Trees on this site would make it extremely difficult for the Applicant to meet the Master Plan recommendations of creating a more urban place. Therefore, the Planning Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance being granted.

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 intent and recommendation of the Master Plan is to create higher density uses in the vicinity of the CCT. Reconfiguring a building around the Protected Trees on this site would make it extremely difficult for the Applicant to meet the Master Plan recommendations of creating a more urban place. This site currently has an approved Sketch Plan #320120010 that will require extensive clearing and grading to accommodate the construction of the proposed mixed-use development, roadways B-9 and B-10, streetscape improvements, stormwater management facilities, and associated public use space.

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

The Variance is based on the constraints of the site, taken together with the Master Plan recommended development density, public facilities and amenities, 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 relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The Variance is not as a result of land or building use on a neighboring property.

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

The Protected Trees requested for removal are not located in an environmental buffer or special protection zone. Mitigation at a rate that approximates the form and function of the Protected Trees removed will provide some mitigation for water quality protection, as well.

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1" diameter at breast height ("DBH") for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 93.5 caliper inches of trees removed, the required mitigation will be eight 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 therefore requires the addition of eight native canopy trees with a minimum size of 3" DBH to the FFCP. Because these trees are in mitigation for Protected Trees removed, they do not count toward afforestation requirements.

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

DPS issued a letter accepting the Stormwater Management Concept approval for the original Preliminary Plan on March 29, 2012. The Preliminary Plan will meet stormwater management requirements through a variety of Environmental Site Design techniques, including micro-bioretenion facilities, planter box micro-bioretenion facilities, and pervious parking.

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 Preliminary Plan will remain valid for 60 months (5 years) 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; and

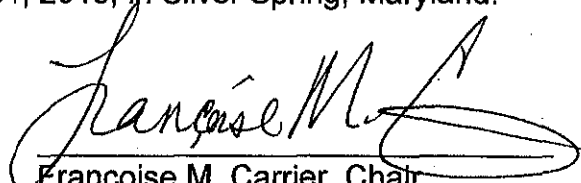
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 4 2013 (which is the date that this Resolution is mailed to all parties of record); and

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).

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**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 Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley voting in favor, and Commissioner Dreyfuss temporarily absent, at its regular meeting held on Thursday, January 31, 2013, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board

