

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-047

Preliminary Plan No. 120220050

Sandy Spring Missing Middle Pilot Project

Date of Hearing: April 27, 2023

JUN 09 2023

RESOLUTION

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

WHEREAS, on June 15, 2022, the Housing Opportunities Commission of Montgomery County and RAD6 Development Corporation (collectively "Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create three (3) new lots for 12 townhouse living units, four (4) lots for three new duplexes (two-unit living), 11 lots for eleven (11) existing single-family detached dwelling units, including a minimum of 25.7percent MPDUs, three open space parcels, and one parcel for a shared private driveway parcel on 3.27 acres of land in the R-60 zone, located north of Olney Sandy Spring Road and along Skymeadow Way ("Subject Property"), in the Rural East Policy Area and *2015 Sandy Spring Rural Village Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120220050, Sandy Spring Missing Middle Pilot Project ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated April 17, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 27, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Pedoeem, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, Commissioners Bartley, Hedrick and Pedoeem voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120220050 to create eighteen (18) lots and related open space and

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320

www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

driveway parcels on the Subject Property, subject to the following conditions:¹

General Approval

1. This Preliminary Plan is limited to three (3) new lots for 12 townhouse living units, four (4) lots for three new duplexes (two-unit living), eleven (11) lots for 11 existing single-family detached dwelling units, including a minimum of 25.7percent MPDUs, three open space parcels, and one parcel for a shared private driveway parcel.
2. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

Plan Validity Period

3. The Preliminary Plan Subdivision Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and before the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

Outside Agencies

4. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated March 16, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
6. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“SHA”) in its letter dated March 8, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

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.

7. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated March 17, 2023, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
9. The Planning Board has reviewed and accepts the recommendations of the MCDPS, Fire Department Access and Water Supply Section in its letter dated March 6, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.
10. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs ("DHCA"), in its letter dated March 28, 2023, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Other Approvals

11. Except clearing and grading associated with the demolition of the existing building and paving, the Applicant must receive Staff certification of Site Plan No. 820220090 before submitting a record plat application or any clearing or grading on the Subject Property. The number and location of site elements including but not limited to buildings, on-site parking, site circulation, sidewalks and shared pathway is determined through Site Plan review and approval.

Environment

12. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over the 0.04-acre onsite forest planting area and the 0.76-acre offsite forest retention credit area as specified on the approved Final Forest Conservation Plan No. 820220090, as amended. The Category I Conservation Easements must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.

13. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three (3) caliper inches totaling thirty-six (36) caliper inches. Planting locations to be shown on the Final Forest Conservation Plan ("FFCP").
14. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

Transportation

Frontage Improvements

15. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate a minimum of thirty (30) feet from the existing pavement centerline along the Subject Property's frontage for Skymeadow Way from Olney-Sandy Spring Road to a point 210 feet to the north of the intersection with Olney-Sandy Spring Rd, and all land necessary to accommodate a minimum of twenty-five (25) feet from the existing pavement centerline from that point to the northernmost Property line for the Subject Property, as shown on the Certified Preliminary Plan.
 - b) All land necessary to accommodate a minimum of forty (40) feet from the existing pavement centerline along the Subject Property's frontage for Olney-Sandy Spring Road.
16. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MCDPS, MCDOT, and SHA to ensure construction of a five-foot wide sidewalk along the Property frontage on Skymeadow Way, and a ten-foot wide sidepath along the Property frontage on Olney-Sandy Spring Road.

Off-Site Improvements

17. Before final approval of any use and occupancy permit, the Applicant must construct a five-foot wide asphalt path through the community recreation space (Parcel H) to link the existing Skymeadow Way cul-de-sac to Branchwood Lane pursuant to MCDPS requirements.

Easements

18. The record plat must show necessary easements.
19. The record plat must reflect common ingress/egress and utility easements over all shared driveways on Parcel C.

Notes and Labels

20. The record plat must reflect all areas under common ownership.

21. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 ("Covenant").

Developments with MPDU's

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

Certified Preliminary Plan

23. The certified Preliminary Plan must contain the following notes:
 - a) Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of 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.
24. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set.
 - b) Include a copy of the Forest Conservation Plan titled "Preliminary Forest Conservation Plan" in the Preliminary Plan application folder, after addressing all outstanding comments in ePlans.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

- 1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape and orientation of the proposed lots are appropriate for the location of the subdivision and proposed townhouse, duplex and detached house building types, taking into account the R-60 zoning standards under the optional

method of development (MPDU) and recommendations of the 2015 Sandy Spring Rural Village Plan.

Pursuant to Section 59.4.1.5, allowed building types in the R-60 zone include a detached house, duplex, and townhouse buildings. A detached house is a building containing one dwelling unit. A duplex is a building containing two (2) principal dwelling units. A townhouse is a building containing three (3) or more dwelling units each separated by a vertical wall.

The Certified Preliminary Plan shows the proposed lotting diagram for the existing and proposed dwelling units. Eleven existing detached house buildings will remain in place. The new unit mix consists of 12 townhouse units in three (3) buildings (Lots 1 to 3) and (6) duplex units in three (3) buildings (Lots 4 to 7):

- Lots 1, 2, and 3 include a back-to-back configured townhouse building, rather than the standard linear arrangement, for a total of 12 units.
- Lots 4 and 5 include a horizontally separated duplex building for a total of 4 units.
- Lots 6 and 7 include a vertically separated duplex building for a total of 2 units.

In this case, the MPDU Optional Method of Development requires site plan approval. Site Plan No. 820220090, was concurrently reviewed and approved, satisfying this requirement.

The lots were reviewed for compliance with the dimensional requirements for the R-60 zone, under the optional method cluster development, as specified in the Zoning Ordinance. As proposed, the lots meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included on the Certified Preliminary Plan.

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

The Preliminary Plan substantially conforms to the recommendations within the 2015 *Sandy Spring Rural Village Plan*, as discussed below:

Land Use

Residential Neighborhood Area Recommendations (Land Use)

- *Support single-family detached and attached residential development.*
- *Protect the single-family residential edge along MD 108.*
- *Provide infill housing opportunities for all ages and income levels.*

The Application was submitted by the Housing Opportunities Commission, which owns, leases, and operates affordable housing across the county. The Application provides a visible single-family residential edge along MD 180 as show in the architectural renderings of the units along the frontage. The infill Project provides a minimum 25.7% MPDUs. As such, the Project will provide single-family attached units, protect the residential edge along MD 108, and provide infill opportunities for all ages and incomes.

Three buildings front MD 108 and protect the single-family residential edge of MD 108. The other three buildings front Skymeadow Way, creating strong presence along the residential edge. All the buildings have a residential scale consistent the surrounding area. The primary parking and services for the buildings are from an alley behind the buildings. The residential buildings are of an architectural style that blends in with the surrounding context. Specifically, the structures are two-stories in height, have front and/or side gables, and architectural elements such as front porches and dormer windows similar to many existing residences and generally characteristic of single-family detached and attached residential development.

Residential Neighborhood Recommendations (Buildings)

- *Site any new residential buildings in this area to be compatible with existing buildings.*
- *Design new housing to be between one and three stories to match the heights of existing homes.*

The proposed residential buildings are compatible with other similar buildings in the area and are designed having no more than three stories in height. The residences along MD 108 and Skymeadow Way have front yards and building massing similar to the existing residences on both sides of MD 108. All buildings have front porches and front and/or side turned gables, and the buildings are between two- and three-stories in height.

Residential Neighborhood Recommendations (Connections)

- *Extend a shared-use path on the north side of MD 108 to connect to the Village Core.*
- *Provide a planting strip of trees between the shared-use path and the road to buffer pedestrians and cyclists.*
- *Plant street trees along both sides of the roadway to provide continuous shading.*

The Project provides a new 10-foot-wide shared use path along the MD 108 frontage and a planting strip will provide pedestrians and cyclists with a buffer from

vehicular traffic. Because of utility lines in close proximity to the intersection of MD 108 and Skymeadow Way, shade trees will be on the property side of the sidepath, rather than the tree planting strip. This alternative planting will satisfy the intended recommendation of planted trees along roadways and provide for adequate, continuous shading at maturity.

Residential Neighborhood Recommendation (Open Space)

- *Provide compatibility with the setbacks of existing and proposed residences along MD 108.*

The development has three (3) residential buildings along MD 108. These buildings have setbacks similar to the existing residential on the south side of MD 108 and are, therefore, compatible with the setbacks of existing residences along MD 108.

Specific Subject Property Recommendations

- *Protect the single-family residential edge along MD 108.*
- *Provide housing for all ages and income levels.*
- *Establish R-60 zoning for Parcel P338 to allow for a transition from the Village Core to the single-family residential along MD 108.*
- *Develop at R-60 and R-200 densities.*
- *Provide infill opportunities for additional residences through the subdivision process.*
- *Maintain the northern forested edge of trees.*

The Project supports all the above recommendations. The development locates the duplexes along MD 108 which are closest in scale to the existing single-family detached dwellings along the road. This creative in-fill project of mostly duplex and townhouse building types provides a natural transition between the more intensely visioned village core to the west and the existing detached dwellings to the north and east. The entire project provides affordable housing for all ages. As discussed below in Subsection 4 (Forest Conservation Law), the development provides a forest conservation easement on the northern edge, thereby maintaining the northern forested edge of trees.

Environment and Noise Guidelines

The 1983 Staff Guidelines for the Consideration of Transportation Noise Impacts In Land Use Planning and Development (“Noise Guidelines”) contains strategies for mitigating the impact of transportation noise on new residential development. Per the Noise Guidelines, this Subject Property is located within the 60 dBA Ldn noise zone, indicating that noise levels in the building’s outdoor activity areas should be maintained at 60 dBA Ldn. According to the Noise Guidelines, any residential building impacted by noise levels above 60 dBA Ldn must be evaluated to certify

that the building structure will be capable of maintaining interior noise levels at 45 dBA Ldn.

The Applicant submitted a Noise Analysis dated August 31, 2022 to examine traffic related noise generated from MD 108 in relation to the Subject Property. The Noise Analysis shows that a portion of the Subject Property will be impacted by transportation noise levels greater than 60 dBA Ldn. The outdoor open space/recreation area is located outside of the noise impacted areas and will not require further analysis or mitigation. Five duplexes and two semi-detached duplexes will be exposed to transportation noise levels above 60 dBA Ldn, with a maximum noise impact of 69 dBA Ldn expected upon the facades of duplexes that directly face MD 108. These levels translate to interior noise levels in excess of the threshold of 45 dBA Ldn. As conditioned, further evaluation of the projected noise levels for interior spaces will be required. Mitigation through the use of varied construction materials may be necessary to provide adequate mitigation for indoor spaces impacted by transportation related noise.

Transportation

Olney Sandy Spring Road is identified as a Country Connector in the 2022 *Complete Streets Design Guide* with a recommended 80-foot right-of-way in the Master Plan. The Applicant will provide 40 feet of dedication as measured from the centerline of MD-108 in support of this recommendation. The 2018 *Bicycle Master Plan* recommends a 10-foot wide sidepath along the north side of the road. As conditioned, this facility will be constructed by the Applicant along the MD-108 frontage.

Skymeadow Way is identified as a town center street in the 2022 *Complete Streets Design Guide* with a recommended 60-foot right-of-way from the Master Plan. As conditioned, the Applicant will provide a minimum of thirty (30) feet from the existing pavement centerline along the Subject Property frontage for Skymeadow Way from Olney-Sandy Spring Road to a point 210 feet to the north of the intersection with Olney-Sandy Spring Rd and all land necessary to accommodate a minimum of twenty-five (25) feet from the existing pavement centerline from that point to the northernmost property line for the Subject Property.

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

As conditioned, adequate public facilities exist to support and service the Subject Property in accordance with Section 50.4.2.D of the Subdivision Regulations.

a) *Roads and other Transportation Facilities*

As conditioned, road and other transportation facilities are adequate to serve the Application.

As noted above, MD-108 operates as a two-lane Country Connector roadway. Existing pedestrian infrastructure is limited to sidewalk on the south side of the road. Metro operates the Z2 (Olney/Silver Spring Station) bus with a stop approximately 500 ft. to the east. Skymeadow Way is identified as a Town Center Street, though operates as a two-lane residential street. There is no existing bike or pedestrian infrastructure. MD-108 will be improved with a 10-ft wide sidepath for bicycle and pedestrian use along the frontage of the Subject Property. Skymeadow Way will be improved with a five-foot-wide sidewalk along the frontage of the Subject Property.

b) Local Area Transportation Review (LATR)

The Applicant has satisfied the requirements of the LATR and the public transportation facilities are adequate for the Project. The Application proposes 17 net new single family detached units which will generate 16 and 19 net-new peak AM and PM person trips. The Application is exempt from additional LATR review; the 2020-2024 *Growth and Infrastructure Policy* only requires a transportation impact study for any project that is estimated to generate a net increase of 50 or more person trips in either the morning or evening peak hours.

c) Schools

The Application is served by Sherwood Elementary School, William H. Farquhar Middle School and Sherwood High School. Based on the FY23 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Table 1 - Applicable FY2022 School Adequacy

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/Deficit		Tier 1	Tier 2	Tier 3
Sherwood ES	519	531	102.3%	-12	No UPP	73	92	170
William H. Farquhar MS	800	696	87.0%	+104	No UPP	230	264	384
Sherwood HS	2,147	2,085	97.1%	+62	No UPP	242	492	814

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY23 Annual School Test, Sherwood Elementary School, William H. Farquhar Middle School and Sherwood High School do not require any UPP as identified in Table 1. If the project is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

To calculate the number of students generated by the proposed amendment, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 17 single-family attached units that are not age-restricted, the Application is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

Table 2 - Estimated Student Enrollment Impacts

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	0	0.185	0.000	0.108	0.000	0.154	0.000
SF Attached	17	0.225	3.825	0.123	2.091	0.159	2.703
MF Low-rise	0	0.107	0.000	0.058	0.000	0.070	0.000
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
TOTALS	17		3		2		2

As shown in Table 2, on average, this project is estimated to generate three elementary school students, two middle school students and two high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 1, therefore no additional UPPs are required, and neither are partial payments across multiple UPP tiers.

d) Other Public Facilities and Services

Public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the

standards set by the Growth and Infrastructure Policy currently in effect. Other public facilities and services are available and are adequate to serve the proposed residential development.

The Washington Suburban Sanitary Commission has reviewed the Application and identified an eight (8) inch gravity sewer main and a 10-inch water main adjacent to the site that are available to serve the Subject Property. The use of water and sewer is consistent the current W-1 and S-1 service categories, respectively.

The Application has been reviewed by the MCDPS Fire Department Access and Water Supply Section who determined that the Project Area has adequate access for fire and rescue vehicles by transmittal dated March 6, 2023.

Electric and telecommunications services as available and adequate to serve the proposed lots. Within the existing subdivision, there are existing easement 10-foot-wide overlapping public utility easements ("PUE"), water and sewer, and public improvement easements ("PIE") parallel to the existing road rights-of-way that currently service the existing subdivision. Where the Applicant is dedicating additional right-of-way for Skymeadow Way and Branchwood Lane, sidewalks will be constructed or reconstructed within the right-of-way and the PIE's will be abandoned. New 10-foot wide PUE's will be recorded parallel to the right-of-way to serve the new and existing dwellings.

Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the *2020-2024 Growth and Infrastructure Policy*.

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

The Subject Property is subject to the Montgomery Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan is a request for a tree variance for impacts and removal of subject trees. The Preliminary Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned and described below.

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420220510 for this Subject Property was approved in October 2021. The NRI/FSD identifies the environmental constraints and forest resources on the Subject Property. The NRI/FSD included 3.27 acres of land comprised of multiple

recorded lots and one parcel located within the Lower Hawlings River watershed which is classified as Use Class IV-P waters by the State of Maryland. A portion of the Subject Property is located within the Patuxent River Primary Management Area ("PMA"), which is associated with a tributary to the Patuxent River located north of the Property. The Subject Property does not contain any forest; however, there are 33 trees with a diameter at breast height ("DBH") of 24 inches or more located on or immediately adjacent to the Subject Property, 13 of these trees has a DBH greater than 30 inches. The Subject Property does not contain any streams, wetlands, floodplain, stream buffers, or highly erodible soils. There are a few areas where slopes exceed 25 percent, primarily along Skymeadow Way and along the western Property line. There are no documented rare, threatened, or endangered species on the Property.

A. Forest Conservation

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

The Applicant has submitted a Preliminary and Final Forest Conservation Plan ("FCP") with the current development plan application for Preliminary Plan No. 120220050 and concurrently considered Site Plan No. 820220090. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned R-60 and is assigned a Land Use Category of High Density Residential ("HDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area. The 2.77-acre net tract area for forest conservation purposes was determined by subtracting 0.50 acres of right-of-way that will not be disturbed as part of this Application from the 3.27-acre Subject Property. There is no existing forest within the net tract area which results in an afforestation requirement of 0.42 acres. The Applicant proposes to meet the planting requirement by planting 0.04 acres of forest onsite and adjacent to an existing offsite Category I Conservation Easement. This 0.04 acres will add to the offsite forest and as conditioned, will be protected in a Category I Conservation Easement. The remaining 0.38-acre planting requirement will be met at a 2:1 ratio by protecting 0.76 acres of existing forest located offsite, in the northern portion of the Sandy

Spring Meadow community, known as Parcel E, and currently owned by the Applicant. This forest is located within a stream buffer of a tributary to the Patuxent River, the same watershed as the Project Area, and is adjacent to existing protected forest. As conditioned, the Application must protect this forest with a Category I Conservation Easement.

Since this Application is being reviewed under the Optional Method of development in a one-family residential zone, it is subject to Section 22A-12(f) *Special provisions for minimum retention, reforestation and afforestation. Section 22A-12(f)(1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.*

Since this Subject Property does not contain any forest, it is subject to Section 22A-12(f)(2)(D), and on-site afforestation must equal the applicable afforestation threshold, requiring the 0.42-acre afforestation requirement to be met onsite. However, Section 22A-12(f)(3) states that if the Planning Board finds that this is not possible, the applicant must provide the maximum possible on-site, not including landscaping before meeting requirements offsite.

Given that this is an existing development with additional infill residential development, there is limited area to provide forest planting. The Applicant is meeting the maximum possible, a 0.04-acre portion of the afforestation requirement onsite as described above, in a location along the property boundary adjacent to an existing Category I Conservation Easement. There are no other appropriate forest planting areas on the Subject Property, therefore, this provision of the Forest Conservation Law has been met and the remainder of the planting requirement may be met offsite.

Further, Section 22A-12(f)(4) of the Forest Conservation Law references the priorities and sequence for afforestation established in Section 22A-12(e) *Standards for reforestation and afforestation.*

Section 22A-12e(1)(A) *Preferred sequence* notes the “preferred sequence for afforestation and reforestation is, in general: on-site afforestation and reforestation; off-site afforestation or reforestation; enhancement of existing forest through on-site selective clearing, supplemental planting,

or both; acquiring credit(s) from an off-site forest mitigation bank; paying fee-in-lieu; and landscaping with an approved plan.”

The Applicant requests a modification to the preferred sequence described above to allow a portion of the afforestation requirement to be met by protecting existing offsite forest under the following provision of the Forest Conservation Law:

Section 22A-12e(1)(B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary... to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts.

In this case, the Application serves the affordable housing objectives of the County, and this Project will provide affordable housing at a location consistent with Master Plan and *Montgomery Thrive 2050* (the “General Plan”) recommendations. This Project aligns with the housing objectives of the General Plan, as the Applicant is providing “missing middle” housing. In addition, page 29 of the *Sandy Spring Rural Village Master Plan* (2015), recommends that “opportunities for additional infill housing should be permitted and encouraged. It specifically mentions the Sandy Spring Meadow subdivision providing additional homes “for all ages and incomes.” In addition, page 31 of the Master Plan includes the recommendation to “maintain the northern forested edge of trees” in the Sandy Spring Meadow subdivision.

The area of forest proposed for protection is outside the limits of the Project, so it is considered offsite; however, it is owned and controlled by the Applicant. This forest was not protected during the original approval of the Sandy Spring Meadow subdivision in 1983 because it pre-dated the Forest Conservation Law of 1991. This forest is adjacent to two properties with existing conservation easements, is located within a stream buffer and the Patuxent River PMA, and allows the Application to help fulfill the objectives of the General Plan and the recommendations of the Master Plan.

The Applicant is providing 0.04 acres of the 0.42-acre forest planting requirement onsite and meets the remaining 0.38-acre requirement by protecting 0.76 acres of offsite forest, meeting the requirements of the Forest Conservation Law.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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 seven Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance dated February 21, 2023, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

In this case, the unwarranted hardship is caused by the existing site conditions, including the existing development to remain, necessary layout of the proposed new development on the Property, and development standards of the zone.

Tree Nos. 1, 2, 3, and 27 are located adjacent to the existing Skymeadow Way and MD 108 and will be severely impacted by the proposed road, bikeway, sidewalk, and utility improvements, requiring their removal. Tree No. 25 is located adjacent to existing Skymeadow Way and will be impacted by the same improvements but to a lesser extent, allowing retention of this tree with appropriate tree protection measures during construction. Tree No. 6 will be impacted by the proposed building and sidewalk construction and Tree No. 9 will be impacted by the necessary stormwater management features and the proposed pedestrian path necessary to improve pedestrian connectivity within the community. These trees will also be retained through the use of appropriate tree protection measures.

The existing conditions including the existing development to remain, current access from MD 108 via existing Skymeadow Way and the required roadway and other improvements have largely determined the limits of disturbance necessary to implement this project and implement the goals and recommendations of the General Plan and the Master Plan. The inability to remove and impact these trees would prohibit the ability of this site to be reasonably redeveloped and implement the goals of the

General Plan and the Master Plan to provide affordable housing in this area. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to redevelop the Subject Property to provide much needed affordable house for which it is recommended.

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

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

Granting the variance will not confer a special privilege to the Applicant as the impact and removal of the specified trees is due to the development of the Subject Property, location of the trees and necessary site design requirements. The impacted and removed Protected Trees are located within the developed area of the site that will be redeveloped and the right-of-way for MD 108 and Skymeadow Way. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. The granting of this variance is not a special privilege that would be denied to other applicants.

2. *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 not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application, including street frontage improvements, and conformance with the goals and recommendations of the General Plan and the Master Plan.

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 variance is a result of the existing conditions and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The proposed removed Protected Trees are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed (136.5 caliper inches total). The Board approved the replacement of Protected Trees at a ratio of approximately one (1) inch caliper for every four (4) inches removed using trees that are a minimum of three (3) caliper inches in size. This results in a total mitigation of 34.2 inches with the installation of twelve, three (3) inch caliper overstory trees native to the Piedmont Region of Maryland on the Subject Property outside of any rights-of-way and outside of any utility easements. The mitigation trees planted on the Subject Property will provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. As conditioned, the mitigation trees are protected as part of a five (5) year maintenance and management agreement. Mitigation is not recommended for Protected Trees that are impacted but retained. The root systems of these trees will regenerate and will continue to provide the benefits that they do today. No mitigation is required for Protected Trees impacted but retained.

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

The Application received an approved stormwater concept plan from the MCDPS, Water Resources Section on March 17, 2023. The Application will meet stormwater management goals through the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) using micro-bioretenion, planter boxes, and bioswales. The Project meets all requirements of Chapter 19.

6. *Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.*

The Applicant has no actual notice or constructive notice of a burial site; and the Subject Property is not included in the Montgomery County Cemetery Inventory.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUN 09 2023 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Pedoeem, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick, and Pedoeem voting in favor of the motion, at its regular meeting held on Thursday, June 1, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board

Jay Shepherd
10400 Detrick Ave.
Kensington, MD 20895

David Ager
6030 Daybreak Circle
Suite A150-109
Clarksville, MD 21029

Philip Rhodes
700 King Farm Boulevard
Suite 300
Rockville, MD 20850

Emily Lally
21 Byte Court, Suite I
Frederick, MD 21702

Bob Dalrymple
4416 East West Highway
4th floor
Bethesda, MD 20816

Matt Gordon
4416 East West Highway
4th floor
Bethesda, MD 20816

David Woodward
20202 Lea Pond Pl
Montgomery Village, MD 20886

Jerry Therrien
20324 Watkins Meadow Dr
Germantown, MD 20876

Donald Chamberlin
4408 Dustin Road
Burtonsville, MD 20866

Sandy Spring Meadow, Preliminary Plan No. 11982180A, Site
Plan No. 81982092A B. Sandy Spring Missing Middle Pilot
Project, Preliminary/Final Forest Conservation No.
120220050, Preliminary Plan No. 120220050, Site Plan No.
820220090