

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

APR 10 2023

MCPB No. 23-016
Preliminary Plan No. 120220130
Preston Place and Lake Apartments
Date of Hearing: March 9, 2023

RESOLUTION

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

WHEREAS, on May 19, 2022, Toll Mid-Atlantic LP Company, Inc. (“Applicant”) filed an application for approval of a preliminary plan of subdivision of property that would create 147 lots and 16 parcels for single-family-attached (townhouse) uses lots on 12.61 acres of land in the R-30 and R-60 zones, located On Manor Road, 75 feet west of Jones Bridge Road (“Subject Property”), in the Bethesda/Chevy Chase Policy Area and 2013 Chevy Chase Lake Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120220130, Preston Place and Lake Apartments (“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 February 13, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 9, 2023, the Planning Board held a public hearing on the Application¹ 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. 120220130 to create 147 lots, for single-family-attached

¹ The public hearing was originally scheduled for February 23, 2023, at which time the Planning Board voted to grant a continuance to the public hearing of March 9, 2023 to allow the re-noticing of the application.

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Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

(townhouse) uses, and 16 parcels on the Subject Property, subject to the following conditions:²

General Approval

1. This Preliminary Plan is limited to 147 lots for 147 Townhouse Living dwelling units, and 16 parcels for associated site infrastructure.

Adequate Public Facilities and Outside Agencies

2. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for nine (9) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5), phased in the following manner, as illustrated on the Certified Preliminary Plan:
 - a) Phase 1 – five (5) years from the initiation date as defined in Section 50.4.3.J.5 of the County Code, the Applicant must obtain all building permits for all townhouses within Phase 1.
 - b) Phase 2 – nine (9) years from the initiation date as defined in Section 50.4.3.J.5 of the County Code, provided that the Applicant has recorded a final record plat for Phase 1 (the Lake Tract) under the requirements of Condition 3 below, the Applicant must obtain all building permits for all townhouses within Phase 2.
 - c) Phases may be constructed in any order subject to the time restrictions above.

Plan Validity Period

3. The Preliminary Plan for Phase 1 (the Lake Tract), as shown on the Certified Preliminary Plan, containing 63 lots and 8 parcels, 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, the Applicant must record a final record plat for all property delineated on the approved Preliminary Plan within Phase 1 in the Montgomery County Land Records or file a request for an extension.
4. The Preliminary Plan for Phase 2 (the Preston Tract), as shown on the Certified Preliminary Plan, containing 84 lots and 8 parcels, will remain valid for six (6)

² 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.

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, the Applicant must record a final record plat for all property delineated on the approved Preliminary Plan within Phase 2 in the Montgomery County Land Records or file a request for an extension.

Outside Agencies

5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated January 20, 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.
6. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated December 7, 2022 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.
8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”), Fire Department Access and Water Supply Section in its letter dated January 31, 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.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in its letter dated January 9, 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

10. Except clearing and grading associated with the demolition of the existing paving and buildings, the Applicant must receive Staff certification of Site Plan No. 820220180 and the accompanying Final Forest Conservation Plan 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. The demolition, clearing, and grading for the existing paving and buildings within Phase 1 can occur after approval of an associated Final Forest Conservation Plan and before recordation of plat. The Applicant may submit the record plat application concurrent with the first submission of the Certified Site Plan. There shall be no further clearing or grading of the Site before recordation of plat(s).
11. The Applicant may not perform clearing or grading beyond the allowances of Condition 10 on any site before recordation of plat(s) for each site.
12. If an approved site plan amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the site plan amendment.

Environment and Noise

13. Before certification of the Preliminary Plan, the noise analysis must be updated to incorporate the supplemental information provided by the noise consultant in their October 18, 2022, email.
14. Before recordation of the plat and the start of any demolition, clearing, grading, or construction for Phase 2 development, the Applicant must record a Category I Conservation Easement over all onsite areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. 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 easements must be referenced on the record plat.
15. Before the certification of the Preliminary Forest Conservation Plan (PFCP), the Applicant must correct the following items:
 - a) Update all FCP sheet for consistency regarding phasing, tree removals, variance tables, mitigation plantings afforestation/reforestation plantings, and associated plan elements as shown in the staff report and/or approved by the Planning Board.

- b) The net tract area for the forest conservation worksheets and associated plans/notes/figures must be revised to clearly reflect the net tract area as being the area contained within the current property boundaries plus the offsite LOD. Any deductions which are not applicable must be removed from the worksheet.
 - c) Update LOD to include all applicable work and grading.
 - d) Clarify/correct notes and graphics to the satisfaction of staff.
 - e) Remove the sediment control specifications, notes and details from the plans, or clarify as for informational purposes and defer to DPS as the lead agency on Sediment Control.
16. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three caliper-inches totaling at least 305 caliper-inches and consist of canopy-tree species which are native to the Piedmont Region of Maryland. Planting locations to be shown on the Final Forest Conservation Plan ("FFCP").
17. Update overall plans as applicable so that all the credited mitigation plantings are at least five (5) feet away from any structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. However, mitigation trees along Manor Road may be planted adjacent to the ROW, provided they are planted within the Subject Property.
18. Applicant must submit a Final Forest Conservation Plan ("FFCP") for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property.
19. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

Transportation

Existing Frontage Improvements

20. 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 35 feet from the existing pavement centerline along the Subject Property frontage for Manor Road.

21. Before the recordation of plat(s) for each phase, the Applicant must satisfy all necessary requirements of MCDPS to ensure construction of a six-foot-wide sidewalk along the Property frontage on Manor Road as follows:
- a) Phase 1: The Applicant must construct buffered sidewalks on the south side of Manor Road along the Lake Tract and along the Chevy Chase Mews on Manor Road Parcel (off-site).
 - b) Phase 2: The Applicant must construct buffered sidewalks on the south side of Manor Road along the Preston Tract and continue all the way eastward to Jones Bridge Road.

Private Roads

22. The Applicant must provide Private Roads Road A, Road B, Road C, Alley B, Alley C, and Alley F, as shown on the Certified Preliminary Plan, including any sidewalks, bikeways including paths/trails, storm drainage facilities, street trees, street lights, private utility systems and other necessary improvements as required by either the Preliminary Plan or the subsequent Site Plan within the delineated private road area (collectively, the "Private Road"), subject to the following conditions:
- a) Private Road A, and Alleys A, B, and C will be constructed during Phase 1.
 - b) Private Roads B and C, and Alleys, D, E, and F will be constructed during Phase 2.
 - c) If there are no structures above or below the Private Road, the record plat must show the Private Road in a separate parcel. If there are structures above or below the Private Road, the record plat must clearly delineate the Private Road and include a metes and bounds description of the boundaries of the Private Road.
 - d) The Private Road must be subjected by reference on the plat to the Declaration of Restrictive Covenant for Private Roads recorded among the Land Records of Montgomery County, Maryland in Book 54062 at Page 338, and the terms and conditions in the Montgomery County Code § 50-4.3.E et seq regarding private roads. The Covenant includes, but is not limited to the following requirements/conditions:
 - i) The Applicant, at its expense, must design, construct and maintain the Private Road.
 - ii) The Applicant, at its sole cost and expense, must properly and continually maintain (including ordinary and capital maintenance and removal of snow, ice, litter, and other obstructions and hazards as soon as conditions

reasonably allow), repair, and replace any portion of the Private Road and all improvements located within the Private Road, in good condition and repair for safe use and operation of the Private Road. The Applicant must maintain a commercially reasonable budget (operating and capital, as applicable) to address both short-term and long-term maintenance, and reserves for capital repairs. The Applicant must provide certification of the reserves to the Planning Board or its Staff every two (2) years (or every five (5) years in the event there are no below-ground parking structures in the Private Road). The reserves must be adequate to cover the costs of needed repairs.

- iii) The Applicant must post and retain signage to notify the public that the Private Road is not publicly maintained and to provide contact information to handle complaints, concerns or questions regarding the Private Road.

- e) Before issuance of the first building permit, the Applicant must deliver to the Planning Department, with a copy to MCDPS, certification by a professional engineer licensed in the State of Maryland that the Private Road has been designed and the applicable building permits will provide for construction in accordance with the paving detail and cross-section specifications required by the Montgomery County Road Code, as may be modified on this Preliminary Plan or a subsequent Site Plan, and that the road has been designed for safe use including horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles/pedestrians/bicyclists, ADA compliance, drainage facilities, sight distances, points of access and parking, and all necessary requirements for emergency access, egress, and apparatus as required by the Montgomery County Fire Marshal.

Easements

- 23. The record plat must show necessary easements, including ingress/egress and utility easements.

Notes and Labels

- 24. The record plat must reflect all areas under common ownership.
- 25. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 ("Covenant"), or as may be amended.

Developments with MPDUs

26. The final number of MPDUs will be determined at the time of site plan approval.

Certified Preliminary Plan

27. The certified Preliminary Plan must contain the following notes:

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 issuance 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.

28. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:

- a) Show resolutions, phasing plan, and approval letters on the certified set.

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 proposed subdivision has been reviewed for compliance with Chapter 50, Subdivision of Land. The layout of the subdivision, including its size, shape, orientation, density of lots, and location and design of roads is appropriate for the residential use and townhouse development contemplated in the R-30 and R-60 Zones.

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

The block design is existing and appropriate for the proposed development and use. The length, width and shape of the block are compatible with the development patterns on

Manor Road and in close proximity to the future Purple Line's Chevy Chase Lake Station.

b) The lot design is appropriate for the development or use contemplated

The Preliminary Plan proposes 147 lots with a minimum lot area of 854 square feet in the R-30 Zone for the development of townhouse units. No lots are proposed in the R-60 Zone. All proposed lots are rectangular in shape and minimum of width of 14 feet at the front building line. The size of the proposed lots exceeds the minimum required lot size of 800 square feet and minimum width of 14 feet is consistent with the requirement of the R-30 Zone. All lots will have access to public or private roads and/or alleys. The size and dimensions of lots proposed are appropriate for the Project location and proposed townhouse development. The Preliminary Plan does not propose any flag lots.

c) The Preliminary Plan provides for required public sites and adequate open areas

i. Master Planned Sites

The 2013 *Chevy Chase Lake Sector Plan* does not include any site-specific recommendations for the Property.

ii. Local Recreation

The proposed subdivision does not include dedication of land for public recreation purposes. As detailed in the concurrent Site Plan, Site Plan No. 820220180, adequate, private, on-site recreational facilities for residents of the development are proposed.

iii. Transportation and Utilities

The Sector Plan includes general recommendations for enhancing pedestrian and bicyclist circulation in the Plan area, and along the Capital Crescent Trail. The Sector Plan specifically recommends improved pedestrian and bicycle access along Coquelin Run (Page 36), a portion of which abuts the east side of Phase 2. This area is an unbuilt, dedicated right-of-way that includes the forested Coquelin Run stream valley. The proposed Project provides a 12-foot-wide asphalt path on the subject Site in Phase 2, outside of the unbuilt right-of-way, that parallels Coquelin Run. This path will run north-south in between Manor Road and the Capital Crescent Trail and when constructed, will fulfill the vision of the Sector Plan for improving pedestrian and bicycle connectivity along Coquelin Run.

d) The Lot(s) and Use comply with the basic requirements of Chapter 59

The Project spans both the R-60 Zone and the R-30 Zone. The Applicant proposes to create 147 lots for entirely Townhouse Living, within the R-30 Zoned portion of the Site, which is a permitted within the R-30 Zone. The lots have been reviewed for compliance with the development standards for the R-30 Zone MPDU Optional Method of development and any applicable standards of the R-60 Zone. The lots as proposed

will meet all the dimensional requirements for area, frontage, width, and setbacks in the relevant zone.

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

a) Land Use

The Preliminary Plan substantially conforms with the 2013 *Chevy Chase Lake Sector Plan*. The Sector Plan affirmed the residential zoning of the Site and the Proposal for residential development is consistent with the Plan's general recommendation for preserving the residential character of the neighborhood. The Plan includes no specific Land Use recommendations for the Site. However, the Sector Plan recommends a shared-use path be developed within the existing dedicated right-of-way associated with Coquelin Run, directly east of Phase 2. The Application provides this shared use path on the subject site adjacent to Coquelin Run.

b) Environment

The Project addresses several of the environmental recommendations contained in the 2013 *Chevy Chase Lake Sector Plan*.

Coquelin Run & Environmental Enhancements

The Sector Plan recommendations encourage support stream and forest restoration projects to stabilize banks, remove invasive species, restore native forest structure, and prevent further stream erosion. Environmental enhancements are recommended by the Sector Plan, even if there are no direct stream valley buffer or forest impacts associated with a given project. Therefore, the direct impacts to the resources which are to be protected and enhanced per the Sector Plan require that an increased scope of environmental enhancements is necessary.

The Applicant proposes to stabilize two areas of active erosion within the Stream Valley Buffer (SVB) which are associated with storm drainage from the current development, which is located entirely within Phase 2 of the proposal. Both areas will be replanted and naturalized to the extent possible, areas outside of the existing/proposed utility easements and right-of-ways will be reforested, and the onsite areas will be placed in a Category I Conservation Easement.

The Project has been conditioned to require the Applicant to implement a program to control invasive species within the SVB. The control of invasive species can occur regardless of the timing of the Phase 2 construction, and the environmental enhancements will achieve the vision of the Sector Plan regarding forest restoration projects. A standard 5-year maintenance and management agreement will also be implemented to ensure the success of the overall environmental enhancements.

In Phase 2, the proposed work includes limits of disturbance that partially overlap two locations of exposed utilities which have been undermined by stream erosion. One or both of the exposed conduits are believed to be sewer lines. As conditioned, the Applicant will be required to expand the scope of work to stabilize the exposed utilities which could otherwise have an adverse impact on the Coquelin Run Stream.

Tree Canopy

Page 49 of the Sector Plan recommends:

"the expansive tree cover in Chevy Chase Lake - 50 percent of the Plan Area - is an important part of the community's character, as well as its ecological health...New development should also retain or improved canopy cover throughout the Plan Area, within street medians, along new and existing streets, and in surface parking areas."

The submitted Canopy Exhibit generally shows that the proposed conditions will result in a modest increase in the overall canopy cover associated with the site. As conditioned, the Applicant will update the Canopy Exhibit to include a table of the corresponding tree plantings using proposed tree species and their 20-year projected canopy sizes found in the Trees Technical Manual. Furthermore, as conditioned the Canopy Exhibit will be updated to reflect the replanting efforts within the SVB.

Sustainable Sites

The Sector Plan recommends (on Page 22) to "[p]romote sustainable site and building design to mitigate negative environmental impacts." In response to this recommendation the Applicant proposes pervious pavement for the exercise equipment pads located along the Coquelin Run on the eastern portion of the Site and indicated that buildings are subject to the residential green construction code. In addition to the proposed exercise equipment pads, the Planning Board will require the utilization of pervious pavement for the construction of the entire trail at eastern side of the Property, where it does not conflict with subsurface utilities. As conditioned, the pervious paving will help address the Sector Plan recommendation on sustainable sites and mitigates some of the environmental impacts of the development, particularly for the proposed trail located in the stream valley buffer.

c) Transportation

According to the 2018 *Master Plan of Highways and Transitways*, Manor Road is Minor Arterial Road, further classified as an Arterial Connector by the 2021 *Complete Streets Design Guide*, with a master-planned right-of-way width of 70 feet. The existing, platted right-of-way width of Manor Road along the Site frontage is 60 feet. As conditioned, the Applicant will dedicate an additional five feet of right-of-way between the Manor roadway centerline and the property line as part of Phase 1. The Applicant will also widen the sidewalks on the south side of Manor Road to six-feet-wide and ensure a buffer width of five-and-one-half-feet. The sidewalk improvements will be split

into two projects across two phases. Phase 1 will include the construction of the sidewalks along the Lake Tract and across the Chevy Chase Mews on Manor Road property (offsite). Phase 2 will continue the sidewalk reconstruction along the south side of Manor Road along the Preston Tract (east) all the way to the intersection with Jones Bridge Road.

The 2018 *Bicycle Master Plan* envisioned a sidepath along the south (Site) side of Manor Road. However, during review of the Chevy Chase Lake Block B Project (Site Plan No. 82016019B) the Planning Board determined that the shared use path would be better suited on the north side of Manor Road. Reasons included the presence of the North Chevy Chase Elementary School on the north side of Manor Road, steep grades on the south side of Manor Road that were approved as part of the Chevy Chase Lake B project that would make it impossible to install along the site's frontage, and the presence of utility poles and guy wires along the south side that were not present on the north side. The Chevy Chase Lake B plans were certified with a note that a future 12-foot sidepath would be installed by others on the north side. For these reasons, the Applicant of the Subject Application is not required to participate in the sidepath on Manor Road.

As conditioned, the Applicant is required to construct the master-planned shared use path that will connect Manor Road to the Capital Crescent Trail, adjacent to the Coquelin Run public right-of-way prior to the final use and occupancy permit of the Phase 2. The Applicant also proposes a shared use path with Phase 1 connecting Manor Road and the Capital Crescent Trail, and a third that will connect the two phases as part of Phase 2 of the Project.

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

a) *Roads and other Transportation Facilities*

i. *Existing Facilities*

As conditioned, the Applicant will dedicate an additional five feet of right-of-way between the centerline of Manor Road and the property line. The Applicant will also widen the sidewalks to six-feet-wide and ensure a buffer width of five-and-a-half-feet between the roadway and sidewalk. In Phase 1 this will span across the Lake Tract and the Chevy Chase Mews. In Phase 2 the sidewalk will continue across the Preston Tract and continue to the intersection with Jones Bridge Road.

ii. *Proposed public transportation infrastructure*

The Applicant will improve the sidewalks along the south side of Manor Road between the Property's westernmost edge to the intersection with Jones Bridge Road. This

includes the portion along Manor Road that stretches across the Gavin Road Court and the segment east of the Site frontage. The Applicant will also construct shared use paths that will provide public connections between Manor Road and the Capital Crescent Trail. The shared use path located along the eastern side of Phase 1 will be provided in Phase 1, as conditioned by the associated Site Plan (Site Plan No. 820220180 Condition 12a). Similarly, the shared use path located along the eastern side of Phase 2 will be provided, as conditioned by Site Plan No. 820220180 Condition No. 12b. A third shared use path connecting the phases (across the rear of the Chevy Chase Mews property) will also be installed by the Applicant as part of Phase 2 for improved public access between Phase 1 and 2, as conditioned by Preliminary Plan Condition No. 12b.

iii. ***Proposed private transportation infrastructure***

The Applicant will construct three private roads (Roads A, B, and C) and six alleys (Alleys A, B, C, D, E, and F) to facilitate internal Site circulation. Private Road A and Private Alleys A, B, and C will be constructed as part of Phase 1 and Private Road B and C and Private Alleys D, E, and F will be constructed as part of Phase 2. These roads will be built to public standard for residential streets and alleys. The roads will have tree-lined sidewalks on both sides of the street, and parallel parking for portions of the roadways.

Residential Roads Paralleling Railroads

Portions of Private Roads A and B parallel the Purple Line corridor and are within 160 feet of the future track location. Per Section 50.4.3.E.1.f “a residential road paralleling a railroad must be located at 160 feet from the track to provide lots with sufficient depth back to the railroad right-of-way”.

The southern portions of Private Roads A and B are approximately 90 feet from the future Purple Line track location. As such, the Applicant has requested a waiver, in accordance with Section 50.9, from this requirement to allow for portions of Private Roads A and B to be parallel to, and within 160 feet of, the Purple Line track location. In accordance with Section 50.9.3.A., the Planning Board finds that the following criteria are met to justify granting the requested waiver:

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

Due the size and orientation of the Site, it is not feasible to provide the full 160-foot separation between the location of future Purple Line tracks and southern portions of Private Roads A and B that run parallel to them, without a significant reduction in the scale of development proposed. The scope and scale of the development are in-line with the vision of the Sector Plan. Additionally, the Applicant contends that the 160-foot

setback is intended to buffer development from a traditional, heavy railroad. The Purple Line will be light rail and generate significantly lower levels of noise, vibration or other potential undesirable impacts typically associated with heavy rail operations. Additionally, there will be a sound barrier wall constructed between the proposed lots and Purple Line corridor. The wall will dampen sound and reduce the visual obtrusiveness of the light rail trains from within the development. Given these factors, the full setback is not necessary to ensure public health, safety, and general welfare are maintained.

2) *The intent of the requirement is still met;*

The 160-foot setback is intended to provide lots with sufficient depth backing to the railroad right-of-way along roadways that parallel railroad tracks. The nature of the Purple Line, being light rail, and inclusion of the sound barrier will help to limit any negative impacts of rail operations on the residential neighborhood and fulfill the intent of the requirement.

3) *The waiver is:*

a) *The minimum necessary to provide relief from the requirements; and*

The waiver requests to reduce the required 160-foot setback by approximately 70 feet and allow for Roads A and B to be set approximately 90 feet from the future location of the Purple Line tracks. This is the minimum reduction necessary to ensure an appropriate setback is provided, while also ensuring other development requirements can be satisfied.

b) *Consistent with the purposes and objectives of the General Plan.*

The waiver request to allow Private Roads A and B to be parallel to future Purple Line tracks at a distance of approximately 90 feet in lieu of 160 feet. The General Plan recommends increasing housing in the Bethesda/Chevy Chase area and focusing that growth near existing and planned public transportation options. The proposed project is consistent with, and supportive of, the purposes and objectives of the General Plan and allow for the creation of a new townhouse community within walking distance of a future Purple Line Station, and with physical connections to the Capital Crescent Trail to further enhance walkability in the area.

b) *Local Area Transportation Review (LATR)*

A transportation exemption statement was submitted for the Subject Application, dated December 21, 2021. The difference between the number of peak hour person trips estimated to be generated by the proposed 147 townhomes, compared to the 133 existing residential units, is 23 in the morning peak hour and nine in the evening peak hour. In both peak hours, the delta is fewer than 50 peak hour person trips. Therefore, a transportation impact study is not required for the Local Area Transportation Review. The trip generation analysis is summarized the table below:

Table 1: Parking Data Table

	ITE Trip Generation		Adjusted Vehicle Rates		Person Trips	
	AM	PM	AM	PM	AM	PM
Existing						
133 Residential Units	53	78	46	68	82	121
Proposed						
147 Residential Units	68	84	59	73	105	130
			Total		23	9

Source: Transportation Exemption Statement prepared by Lenhart Traffic Consulting, Inc., dated Dec 21, 2021, modified by staff

c) Other Public Facilities and Services

General

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

Schools

The FY23 Annual School Test, approved by the Planning Board on June 16, 2022 and effective July 1, 2022 is applicable to this Application. This plan proposes 147 single-family attached (townhouse) units in a location served by the Rosemary Hills/North Chevy Chase Elementary School, Silver Creek Middle School, and Bethesda-Chevy Chase 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 2: Applicable FY2023 School Adequacy Test Results

School	Projected School Totals, 2026				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Rosemary Hills/North Chevy Chase ES	946	810	85.6%	+136	No UPP	221	326	468
Silver Creek MS	935	858	91.8%	+77	No UPP	203	264	405
Bethesda-Chevy Chase HS	2,457	2,356	95.9%	+101	No UPP	281	593	961

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, Rosemary Hills/North Chevy Chase Elementary School, Silver Creek Middle School, and Bethesda-Chevy Chase High School do not require any UPP. 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 plan, 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 147 single-family attached (townhouse) units that are not age-restricted, the project is estimated to generate the following number of students based on the Subject Property's location within an Infill Impact Area:

Table 3: 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	0.195	0.000	0.096	0.000	0.139	0.000
SF Attached	147	0.166	24.402	0.091	13.377	0.116	17.052
MF Low-rise	0	0.059	0.000	0.023	0.000	0.032	0.000
MF High-rise	0	0.034	0.000	0.015	0.000	0.016	0.000
TOTALS	147		24		13		17

As shown in Table 3, on average, this project is estimated to generate 24 elementary school students, 13 middle school students and 17 high school students. The estimated number of students generated do not exceed the adequacy ceilings identified for each school in Table 2. Therefore, no additional UPPs are required, and neither are partial payments across multiple UPP tiers.

Adequate Public Facility Validity Period

In accordance with Section 50.4.3.J.5.d. the Applicant requests a longer validity period than the minimum specified in Subsection 4.3.J.5.a. and provided a phasing plan demonstrating when each phase of development is to be completed. As conditioned, the

Adequate Public Facilities review for the Preliminary Plan will remain valid for 9 years (108 months), phased in the following manner:

- a. Phase 1 – five (5) years from the initiation date.
- b. Phase 2 – nine (9) years from the initiation date, provided that the Applicant has recorded a final record plat for Phase 1 (the Lake Tract), as conditioned.

To allow an Adequate Public Facilities Review validity period longer than the specified minimum, the Planning Board must make the following required finding of Section 50.4.3.J.5.d.ii:

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

The project is proposed to be developed in two phases as provided in the Applicant's phasing plan. Phase 1 includes 63 townhouse units, associated infrastructure and site features. Upon sale of those units, the Applicant proposes to begin development of the second phase. Phase 2 is anticipated to be completed in three years.

The Application contends that current market conditions and increasing mortgage interest rates add complexity to the proposed subdivision, which warrant the longer than minimum validity time frame for the adequate public facility review. Further, the Applicant contends that the extended validity period would not be adverse to the public interest. Retention of the existing townhouses located in Phase 2 during the five-year Phase 1 allows for those units to remain available for housing until Phase 2 of the project is ready to advance. Additionally, the development's location adjacent to the future Purple Line and its Chevy Chase Lake station, as well as the Capital Crescent Trail. These pieces of infrastructure remain under construction proximate to the Site, with an expected completion date that is several years away, and subject to change. The applicant's ability to market these units is somewhat dependent upon the completion of the Purple Line and reopening of the Capital Crescent Trail.

The extended validity period allows the Applicant flexibility to complete both phases of the project over a longer time period than the minimum. Conditions are recommended herein to assure adequate levels of transportation are provided during the validity period. The School adequacy analysis above indicates that full built-out of the project will not require the Applicant to provide UPPs.

4. All Forest Conservation Law, Chapter 22A requirements are satisfied.

a) Forest Conservation Plan

The application is in compliance with the Environmental Guidelines and Forest Conservation Law. The Project is subject to a forest conservation plan that has been submitted with the application. The Subject Property contains 1.21 acres of forest of which approximately 0.91 acres will be retained within a Category I Conservation Easement. There is approximately 0.30 acres of forest removal resulting in a reforestation requirement of approximately 0.60 acres and an afforestation requirement of approximately 0.80 acres. The total reforestation and afforestation requirement is approximately 1.40 acres. The Applicant proposes to address the reforestation/afforestation requirements by payment of a fee-in-lieu or an offsite bank. The disturbed areas of SVB will replanted to the extents possible but with the use variance mitigation trees and supplemental native plantings rather than traditional reforestation plantings. As conditioned, Preliminary Forest Conservation Plan meets the standards of Chapter 22A.

b) Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The proposed project includes disturbance within the CRZs of trees which are subject to a variance due to their size measuring 30 inches DBH or greater.

The Applicant submitted a variance request dated January 30, 2023 (Attachment D). The Applicant requests to remove 34 trees (including 11 trees that may be potentially removed but with intent to save) and to impact, but not remove, 11 other trees, affecting a total of 45 trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Table 4: Trees to be removed or potentially removed

Tree No.	Botanical Name	Common Name	D.B.H (in.)*	Condition	Recommendation
2	Acer rubrum	Red Maple	34	Fair	Remove: 100% CRZ Impact
4	Liquidambar styraciflua	Sweetgum	32	Good	Remove: 100% CRZ Impact
7	Liriodendron tulipifera	Tuliptree	44	Good	Remove: 100% CRZ Impact
8	Acer rubrum	Red Maple	30	Good	Remove: 100% CRZ Impact
9	Acer rubrum	Red Maple	34	Good	Remove: 100% CRZ Impact
13	Acer rubrum	Red Maple	33	Fair	Remove: 100% CRZ Impact
18	Quercus rubra	Northern Red Oak	43	Good	Remove: 100% CRZ Impact
19	Liquidambar styraciflua	Sweetgum	31	Good	Remove: 100% CRZ Impact
20	Quercus palustris	Pin Oak	32	Fair	Remove: 100% CRZ Impact
21	Quercus palustris	Pin Oak	36	Fair/Poor	Remove: 100% CRZ Impact
22	Quercus palustris	Pin Oak	35	Fair	Remove: 97% CRZ Impact*
23	Quercus rubra	Northern Red Oak	30	Fair/Poor	Remove: 100% CRZ Impact
24	Quercus rubra	Northern Red Oak	45	Fair	Remove: 98% CRZ Impact*
26	Quercus rubra	Northern Red Oak	40	Fair	Remove: 98% CRZ Impact*
27	Acer rubrum	Red Maple	40	Fair/Good	Remove: 100% CRZ Impact
29	Acer rubrum	Red Maple	42	Poor	Remove: 100% CRZ Impact
32	Quercus palustris	Pin Oak	50	Good	Remove: 100% CRZ Impact
35	Acer rubrum	Red Maple	39	Good	Remove: 100% CRZ Impact
37	Quercus rubra	Northern Red Oak	43	Fair	Remove: 100% CRZ Impact

38	<i>Quercus palustris</i>	Pin Oak	33	Fair/Good	Remove: 97% CRZ Impact*
39	<i>Quercus palustris</i>	Pin Oak	46	Fair	Remove: 100% CRZ Impact
40	<i>Quercus montana</i>	Chestnut Oak	41	Fair	Remove: 98% CRZ Impact*
41	<i>Quercus palustris</i>	Pin Oak	41	Fair/Poor	Remove: 100% CRZ Impact
42	<i>Platanus occidentalis</i>	American sycamore	36	Fair	Remove: 100% CRZ Impact
44	<i>Liquidambar styraciflua</i>	Sweetgum	35	Fair/Good	Remove: 44% CRZ Impact*
45	<i>Pinus strobus</i>	Eastern white pine	42	Fair	Remove: 39% CRZ Impact*
46	<i>Acer rubrum</i>	Red Maple	32	Fair/Poor	Remove: 100% CRZ Impact**
48	<i>Pinus strobus</i>	Eastern white pine	34	Fair	Remove: 100% CRZ Impact**
50	<i>Pinus strobus</i>	Eastern white pine	46	Fair	Remove: 52% CRZ Impact
54	<i>Quercus rubra</i>	Northern red oak	32	Fair	Remove: 51% CRZ Impact*
68	<i>Liriodendron tulipifera</i>	Tuliptree	41	Good	Remove: 36% CRZ Impact*
69	<i>Liriodendron tulipifera</i>	Tuliptree	37	Fair	Remove: 41% CRZ Impact*
70	<i>Liriodendron tulipifera</i>	Tuliptree	37	Good	Remove: 59% CRZ Impact*
77	<i>Liriodendron tulipifera</i>	Tuliptree	40	Good/Fair	Remove: 100% CRZ Impact

* Removal with intent to save.

**Removal from cleared forest.

Table 5 - Subject Trees to be Impacted but Retained

Tree No.	Botanical Name	Common Name	D.B.H. (in.)	Condition	Recommendation
53	Liriodendron tulipifera	Tuliptree	34	Fair	Save: 28% CRZ Impact
55	Liriodendron tulipifera	Tuliptree	31	Good	Save: 2% CRZ Impact
60	Liriodendron tulipifera	Tuliptree	36	Good	Save: 28% CRZ Impact
62	Liriodendron tulipifera	Tuliptree	34	Fair	Save: 40% CRZ Impact
65	Liriodendron tulipifera	Tuliptree	54	Good	Save: 46% CRZ Impact
66	Liriodendron tulipifera	Tuliptree	44	Good	Save: 6% CRZ Impact
72	Quercus palustris	Pin Oak	35.5	Fair	Save: 7% CRZ Impact
73	Quercus palustris	Pin Oak	32.5	Fair	Save: 15% CRZ Impact
74	Quercus palustris	Pin Oak	30.5	Fair	Save: 11% CRZ Impact
75	Quercus rubra	Northern Red Oak	38	Poor	Save: 16% CRZ Impact
76	Quercus palustris	Pin Oak	33.6	Fair	Save: 12% CRZ Impact

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is related to the Sector Plan recommendations for the trail connection and environmental enhancement work (such as stream bank stabilization) which results in removals and impacts of subject trees, despite considerable efforts to avoid and minimize the overall impacts. Not granting the variance would among other things prevent the Sector Plan recommendations from being implemented. Therefore, the Planning Board finds that the Applicant has a sufficient unwarranted hardship to justify a variance request.

c) Variance Findings:

The following determinations are based on the required findings for granting of the requested variance:

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

The Subject Property is located near a planned mass transit station where increased density is generally recommended in the Sector Plan and by overarching County policies. Furthermore, the Sector Plan recommends the proposed trail connection and environmental enhancement work associated with some of the impacts and removals. Additionally, considerable efforts were made to avoid and minimize the overall impacts and the Applicant will provide mitigation for the removals of subject trees. The variance request would be granted to any applicant in a similar situation. Therefore, the Planning Board finds that granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested 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 and necessary design requirements of this project.

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

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

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

The existing site conditions include considerable impervious areas with very little or no stormwater management. Therefore, a redevelopment that provides appropriate stormwater management will help to improve the associated water quality. MCDPS approved the stormwater management concept for the project on December 7, 2022. The stormwater management concept plan proposes to meet required stormwater management goals via the use of 6 Microbioretention, 7 Storm Filters with Underground Pipe Storage. Additionally, the Project will control existing drainage, which is causing active erosion within the Stream Valley Buffer, and then generally restore the affected areas to a natural condition. The soil restoration techniques to be implemented as conditioned will maximize the permeability of the soil helping to further reduce runoff while also enhancing the setting for the associated plantings. The replanting of mitigation trees will also help water quality goals by providing shading and water retention and uptake. Collectively these efforts are anticipated to ultimately have an improvement on water quality. Therefore, the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

There are 34 trees proposed for removal or potential removal in association with the application. There will also be disturbance to CRZs of another 11 trees that will be retained. Planting mitigation for the removals should be at a rate that approximates the form and function of the trees removed. Replacement should occur at a ratio of approximately one inch caliper for every four inches DBH of removal, using onsite trees that are a minimum of three inches caliper overstory trees native to the Piedmont Region of Maryland on the Property. For the 1220 diameter-inches of subject trees to be removed³, the Applicant must provide mitigation of at least 305 caliper-inches of replacements. In this case, the Applicant proposes to plant approximately 80 trees with a combination of 3-inch and 4-inch caliper sizes and the final locations, quantities and sizes will be determined as part of the Certified FFCP review.

As a result of the above findings, the Planning Board approves with conditions the Applicant's request for a variance from Forest Conservation Law to remove or 34 subject trees, 11 of which are potential removals, and to impact, but retain, 11 other subject trees associated with the site (affecting a total of 45 subject trees).

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

The Montgomery County Department of Permitting Services (MCDPS) approved a Stormwater Concept Plan on December 7, 2022. The Stormwater Concept Plan proposes to meet required stormwater management goals via the use of 6 Microbioretention cells, 7 Storm Filters, and Underground Pipe Storage.

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 does not have any notice, actual or constructive, of the existence of a burial site on the Property and none are included in the Montgomery County Cemetery inventory.

7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.

³ Two of the subject trees proposed for removal are not included in the total as they are located within areas of forest clearing that are addressed by the overall reforestation/afforestation worksheet requirements and therefore do not also warrant individual replacement plantings.

No other provisions apply to the Subdivision.

BE IT FURTHER RESOLVED that this Preliminary Plan for Phase 1 will remain valid for 3 years and for Phase 2 will remain valid for 6 years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G) as described in Conditions 3 and 4 above, and that before 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 APR 10 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 motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 3-0; Chair Zyontz, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Commissioners Pedoeem and Piñero were necessarily absent, at its regular meeting held on Thursday, March 24, 2023, in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
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Preston Place and Lake Apartments
Preliminary Plan No. 120220130 and
Site Plan No. 820220180