

R E S O L U T I O N

WHEREAS, Black-Eyed Susan Partners, LLC is the owner of a 72.23-acre parcel of land known as Part of Parcel 90, said property being in the 11th Election District of Prince George's County, Maryland, and being zoned Mixed Use-Transportation Oriented (M-X-T); and

WHEREAS, on June 26, 2019, Black-Eyed Susan Partners, LLC c/o Rodgers Consulting filed an application for approval of a Preliminary Plan of Subdivision for 407 lots and 53 parcels; and

WHEREAS, the application for approval of the aforesaid Preliminary Plan of Subdivision, also known as Preliminary Plan 4-18028 for Branch Avenue M-X-T was presented to the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission by the staff of the Commission on October 3, 2019, for its review and action in accordance with the Land Use Article of the Annotated Code of Maryland and the Regulations for the Subdivision of Land, Subtitle 24, Prince George's County Code; and

WHEREAS, the staff of The Maryland-National Capital Park and Planning Commission recommended APPROVAL of the application with conditions; and

WHEREAS, on October 3, 2019, the Prince George's County Planning Board heard testimony and received evidence submitted for the record on the aforesaid application.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 24, Prince George's County Code, the Prince George's County Planning Board APPROVED Type 1 Tree Conservation Plan TCP1-008-2018-01, and APPROVED a Variance to Section 25-122(b)(1)(G) and Section 27-548(h), and further APPROVED Preliminary Plan of Subdivision 4-18028, including a Variation from Section 24-121(a)(3), Section 24-121(a)(4), and Section 24-128(b)(7)(A), for 407 lots and 53 parcels with the following conditions:

1. Prior to signature approval of this preliminary plan of subdivision, the following revisions shall be made to the plan:
 - a. Revise the plan to list the approved variations and variances.
 - b. Revise the plan to replace references from "Central Branch Avenue" to "Branch Avenue."
2. In conformance with the 2009 *Approved Countywide Master Plan of Transportation, 2013 Approved Subregion 5 Master Plan* and Conceptual Site Plan CSP-17003, the applicant and the applicant's heirs, successors, and/or assignees shall provide additional sidewalk segments along the following locations:

- a. Along the north side of Street “A” from Brandywine Road to Parcel S.
 - b. Along the east side of Street “H” from Street “C” to the southern end of the perpendicular parking adjacent to Block G, Lot 26.
3. Prior to the approval of any building permit for the subject property, the applicant and the applicant’s heirs, successors, and/or assignees shall demonstrate that the following required adequate pedestrian and bikeway facilities as designated below, in accordance with Section 24-124.01 of the Subdivision Regulations, have (a) full financial assurances, (b) have been permitted for construction through the applicable operating agency’s access permit process, and (c) have an agreed-upon timetable for construction and completion with the appropriate operating agency:
 - a. Two bus shelters along Bus Route 36 on Brandywine Road, as shown on the bicycle pedestrian impact statement exhibit.
4. Prior to acceptance of a detailed site plan, the applicant shall provide an exhibit that illustrates the location, limits, and details of the off-site bus shelters and any associated sidewalk, crosswalk, and Americans with Disabilities Act ramp improvements consistent with Section 24-124.01(f) of the Subdivision Regulations.
5. Total development within the subject property shall be limited to uses that would generate no more than 491 AM and 476 PM peak-hour vehicle trips. Any development generating an impact greater than that identified herein above shall require a new PPS, with a new determination of the adequacy of transportation facilities.
6. Prior to approval of a building permit for each townhouse dwelling unit, a fee calculated as \$1,338 multiplied by (Engineering News Record Highway Construction Cost index at time of payment) / (Engineering News Record Highway Construction Cost Index for first quarter, 1993), as shown, in accordance with Prince George’s County Council Resolution CR-9-2017, shall be determined. All fees shall be paid to Prince George’s County (or its designee), to be indexed by the appropriate cost indices to be determined by the Prince George’s County Department of Permitting, Inspections and Enforcement.
7. Prior to approval of a building permit for the assisted living facility, a fee calculated as \$999 per residential unit, multiplied by (Engineering News Record Highway Construction Cost index at time of payment) / (Engineering News Record Highway Construction Cost Index for first quarter, 1993), as shown, in accordance with Prince George’s County Council Resolution CR-9-2017, or as amended, shall be determined. All fees shall be paid to Prince George’s County (or its designee), to be indexed by the appropriate cost indices to be determined by the Prince George’s County Department of Permitting, Inspections and Enforcement.

8. Prior to approval of a building permit for any structure used for commercial development, a fee calculated as \$2.07 per gross floor area, multiplied by (Engineering News Record Highway Construction Cost index at time of payment) / (Engineering News Record Highway Construction Cost Index for first quarter, 1993), as shown, in accordance with Prince George's County Council Resolution CR-9-2017, shall be determined. All fees shall be paid to Prince George's County (or its designee), to be indexed by the appropriate cost indices to be determined by the Prince George's County Department of Permitting, Inspections and Enforcement.
9. Prior to signature approval of the preliminary plan of subdivision, the Type 1 tree conservation plan shall be revised, as follows:
 - a. Remove "previous approved for removal" column on the specimen tree table.
 - b. Revise the woodland conservation worksheet to show the corrected net tract woodland total (69.46 acres).
 - c. Have the revised plan signed and dated by the qualified professional preparing the plan.
10. Prior to signature approval of the preliminary plan of subdivision, the following note shall be placed on the Type 1 tree conservation plan, which reflects this approval, directly under the woodland conservation worksheet:

"NOTE: This plan is in accordance with the following variance from the strict requirements of Subtitle 25 approved by the Planning Board on (ADD DATE): The removal of four specimen trees (Section 25-122(b)(1)(G), ST-1, a 30-inch Tulip Poplar, ST-2, a 33-inch White Oak, ST-5, a 30-inch Red Oak, and ST-8, a 42-inch American Beech."
11. Prior to the issuance of permits for this subdivision, a Type 2 Tree Conservation Plan shall be approved. The following note shall be placed on the final plat of subdivision:

"This plat is subject to the recordation of a Woodland Conservation Easement pursuant to Section 25-122(d)(1)(B) with the Liber and folio reflected on the Type 2 Tree Conservation Plan, when approved."
12. Development of this subdivision shall be in compliance with an approved Type 1 Tree Conservation Plan (TCP1-008-2018-01). The following notes shall be placed on the final plat of subdivision:

"This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-008-2018-01), or as modified by a future Type 2 Tree Conservation Plan and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland Conservation/Tree Preservation Policy."

13. Substantial revision to the uses on the subject property that affect Subtitle 24 adequacy findings shall require approval of a new preliminary plan of subdivision, prior to approval of any permits.
14. Prior to approval of the final plat, the applicant and the applicant's heirs, successors, and/or assignees shall:
 - a. Grant 10-foot-wide public utility easements along the public and private rights-of-way as delineated on the preliminary plan of subdivision.
 - b. Dedicate the public rights-of-way as delineated on the approved preliminary plan of subdivision.
 - c. Demonstrate that a homeowners association has been established. The draft covenants shall be submitted to the Subdivision and Zoning Section to ensure that the rights of The Maryland-National Capital Park and Planning Commission are included. The liber/folio of the declaration of covenants shall be noted on the final plat prior to recordation. This requirement shall not apply to the final plat for Parcels XX or WW.
15. The applicant shall allocate appropriate and developable areas for the private recreational facilities within the residential development. The private recreational facilities shall be evaluated by the Urban Design Review Section of the Development Review Division for adequacy and proper siting during its consideration of the detailed site plan for residential development.
16. All on-site private recreational facilities shall be designed, in accordance with the Parks and Recreation Facilities Guidelines.
17. The applicant and the applicant's heirs, successors, and/or assignees shall submit three original recreational facilities agreements (RFA) to the Development Review Division (DRD) for construction of recreational facilities on-site, for approval prior to submission of final plats for residential development. Upon approval by DRD, the RFA shall be recorded among the Prince George's County Land Records and the liber/folio indicated on the plat prior to recordation.
18. The applicant and the applicant's heirs, successors, and/or assignees shall submit a performance bond, letter of credit, or other suitable financial guarantee for the construction of recreational facilities on-site prior to issuance of building permits for residential development.
19. Development of this site shall be in conformance with an approved stormwater management concept plan and any subsequent revisions.
20. Prior to approval of building permits, except building permits issued for Parcel XX or Parcel WW, the applicant and the applicant's heirs, successors, and/or assignees shall convey to the homeowners association, land as identified on the approved preliminary plan of subdivision. Land to be conveyed shall be subject to the following:

- a. A copy of the deed for the property to be conveyed shall be submitted to the Subdivision and Zoning Section of the Development Review Division, Upper Marlboro.
 - b. All waste matter of any kind shall be removed from the property, and all disturbed areas shall have a full stand of grass or other vegetation upon completion of any phase, section, or the entire project.
 - c. The conveyed land shall not suffer the disposition of construction materials or soil filling, other than the placement of fill material associated with permitted grading operation that are consistent with the permit and minimum soil class requirements, discarded plant materials, refuse, or similar waste matter.
 - d. Any disturbance of land to be conveyed to a homeowners association shall be in accordance with an approved site plan and tree conservation plan. This shall include, but not be limited to, the location of sediment control measures, tree removal, temporary or permanent stormwater management facilities, utility placement, and storm drain outfalls.
 - e. Storm drain outfalls shall be designed to avoid adverse impacts on land to be conveyed to the homeowners association. The location and design of drainage outfalls that adversely impact property to be conveyed shall be reviewed and approved by the Development Review Division.
 - f. The Prince George's County Planning Board, or its designee, shall be satisfied that there are adequate provisions to ensure retention and future maintenance of the property to be conveyed.
21. Prior to approval of a detailed site plan, for the portion of the subject property that contains archeological site 18PR1106 and the Townshend Family Cemetery (18PR1109), the applicant, and the applicant's heirs, successors, and/or assignees shall:
- a. Provide a final report detailing the Phase II archeological investigations. In accordance with Section IV.D Collections Policy of the Planning Board's *Guidelines for Archeological Review*, the curated artifacts and associated documentation shall be deposited with the Maryland Historical Trust's Maryland Archeological Conservation Lab at Jefferson Patterson Park and Museum in St. Leonard, Maryland.
 - b. Provide interpretive measures that address the findings of the archeological investigations, based on the significance of the findings. The interpretive measures shall be reviewed and approved by the Planning Department's staff archeologist.
 - c. Provide details of a protective fence to enclose the Townshend Family Cemetery (18PR1109), interpretive signage, and access to the cemetery.

- d. Provide plans and a timetable for the long-term maintenance and restoration of the Townshend family cemetery.
22. Prior to the issuance of a grading permit for the portion of the subject property that contains archeological site 18PR1106 and the Townshend Family Cemetery (18PR1109), the applicant shall provide proof of the installation of a super silt fence around the limits of disturbance, as shown on the plans for archeological site 18PR1106 and the Townshend Family Cemetery (18PR1109).
 23. Prior to approval of the final plat for the portion of the subject property that contains archeological site 18PR1106 and the Townshend Family Cemetery (18PR1109), the applicant and the applicant's heirs, successors, and/or assignees shall establish archeological conservation easements around archeological site 18PR1106 and the Townshend Family Cemetery, 18PR1109. The easements shall be shown on the final plat with the recording reference, and the following note shall be placed on the final plat:

“Any ground disturbance within the archeological conservation easements must be reviewed and approved by The Maryland-National Capital Park and Planning Commission (M-NCPPC), Prince George’s County Planning Department, Countywide Planning Division, Historic Preservation Section.”
 24. The detailed site plan shall be evaluated for the inclusion of salt tolerant landscaping and durable building materials along A-65, where necessary.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George’s County Planning Board are as follows:

1. The subdivision, as modified with conditions, meets the legal requirements of Subtitles 24 and 27 of the Prince George’s County Code and the Land Use Article of the Annotated Code of Maryland.
2. **Background**—The subject property is located northeast of the intersection of Brandywine Road and Savannah Parkway. This preliminary plan of subdivision (PPS) includes Part of Parcel 90, recorded in Prince George’s County Land Records, in Liber 39313 folio 573.

The subject property is 72.23 acres and zoned Mixed Use-Transportation Oriented (M-X-T). The PPS provides 407 lots and 53 parcels for development of 407 single-family attached dwelling units, a 240-unit assisted living facility, and 12,000 square feet of commercial development; the site is currently vacant.

The site is bifurcated by significant environmental features, located on Parcels A, B, XX, and WW. These features result in the site being developed into two distinct pods. The pod to the east is for the assisted living facility and commercial development. The pod to the west is to be developed with single-family attached dwelling units.

Section 24-121(a)(3) of the Subdivision Regulations requires that when lots or parcels are proposed on land adjacent to an existing or planned arterial or higher classification, they shall be designed to front on either an interior street or a service road. A restricted right turn into and out of the property along MD 5, which borders the site to the east, is provided with this application, which requires approval of a variation by the Prince George's County Planning Board, as discussed further in the Transportation finding.

Section 24-121(a)(4) requires that residential lots adjacent to an existing or planned roadway of arterial classification shall be planned with a minimum depth of 150 feet. Adequate protection and screening from traffic nuisances shall be provided. The platting of 84 lots within the 150-foot lot depth was approved.

Section 24-128(b)(7)(A) of the Subdivision Regulations requires attached single-family dwellings, which are to be served by an alley, to have frontage on a public right-of-way. A variation for the townhouse lots served by an alley, which do not have frontage on a public right-of-way, was approved as discussed further in the Transportation finding.

Section 27-548(h) of the Zoning Ordinance requires that townhouse lots in the M-X-T Zone have no more than eight townhouse units provided per building group, unless it is demonstrated that more than eight townhouse units (but not more than ten) would create a more attractive living environment. This provision further requires that the minimum building width in any continuous, attached group shall be 18 feet. One townhouse building group with 9 units and 45 townhouse units with 16-foot widths, were approved.

A variance to Section 25-122(b)(1)(G) of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) was approved for the removal of four specimen trees.

3. **Setting**—The property is located on Tax Map 134 in Grids D-3, D-4, E-3, E4, and F-3 and is in Planning Area 85A. The subject site is irregularly shaped, and is bounded by Brandywine Road to the east and MD 5 (Branch Avenue) to the west. Properties to the south are zoned Rural Residential (R-R), properties to the southwest, south, and southeast are developed with residential uses, vacant, and developed with institutional uses respectively. Properties to the northwest are zoned R-R and are developed with residential uses. Properties to the northeast are zoned Residential Estate (R-E) and are vacant.
4. **Development Data Summary**—The following information relates to the subject PPS application and the approved development.

	EXISTING	APPROVED
Zone	M-X-T	M-X-T
Use(s)	Vacant	Residential/Assisted Living Facility/Commercial
Acreage	72.23	72.23
Gross Floor Area	0	12,000 sq. ft.
Dwelling Units	0	407
Assisted Living Facility Units	0	240
Parcels	1	53
Lots	0	407
Variance	No	Yes 25-122(b)(1)(G) 27-548(h)
Variation	No	Yes 24-121(a)(3) 24-121(a)(4) 24-128(b)(7)(A)

Pursuant to Section 24-119(d)(2) of the Subdivision Regulations, this case was heard before the Subdivision and Development Review Committee (SDRC) on July 12, 2019. The requested variations from Sections 24-121(a)(3) and 24-128(b)(7)(A) were accepted on June 26, 2019, and heard before SDRC on July 12, 2019, as required by Section 24-113(b) of the Subdivision Regulations. The requested variation from Section 24-121(a)(4) was accepted on August 9, 2019, and heard before SDRC on August 23, 2019, as required by Section 24-113(b).

5. **Previous Approvals**—Conceptual Site Plan CSP-17003, governing the subject site, was approved by the Planning Board on October 11, 2018, (PGCPB Resolution No. 18-98), with four conditions. The following conditions attached to CSP-17003, are applicable to the review of this PPS as follows:

2. **At time of preliminary plan of subdivision (PPS), the applicant shall:**

- a. **Submit a variance application and statement of justification for the removal of specimen trees.**

A variance application and statement of justification (SOJ) for the removal of specimen trees was submitted with this application. This is further discussed in the Environmental finding.

- b. **Submit a statement of justification for the necessary primary management area impacts. The statement of justification shall address all proposed impacts to regulated environmental features.**

An SOJ for primary management area (PMA) impacts was submitted with this application. This is further discussed in the Environmental finding.

- c. **Submit a noise study to demonstrate that no outdoor activity areas are within the mitigated noise contour line of 65 dBA Ldn or above and the mitigated residential interior noise level is below 45 dBA Ldn.**

A noise study was submitted with this application. This condition has been met.

- d. **Provide the master plan trail along one side of A-65 (Savannah Parkway) and a standard sidewalk along the other. Show the appropriate dedication of right-of-way for the proposed A-65 that shall accommodate the master plan trail.**

The trail and right-of-way dedication are shown on the submitted plans as required along Savannah Parkway. This condition has been met.

- e. **Evaluate if a trail access may be appropriate between the planned commercial development area and the residential development areas.**

The trail connection exhibit shows the alignment and design of the trail connection linking the residential units with the commercial space. Due to the extensive grading and switchbacks required to negotiate steep slopes along the stream valley, the length of the connection and the amount of grading necessary is greatly increased and the cost is estimated to be over \$1,700,000, which is well beyond the cost required for on-site recreational facilities. Due to the cost, design issues, and impacts to the environmental setting, the Planning Board finds that the trail is not feasible.

- f. **Provide an extension of “Street B” to connect with the existing stub end of Malthus Street.**

The extension of Street B is delineated on the PPS. This condition has been met.

3. Prior to approval of a detailed site plan for the project, the applicant shall:

- b. **Provide sidewalks on both sides of all internal roads consistent with the Complete Streets Policies of the MPOT, unless modified by the Department of Permitting, Inspections and Enforcement or the Department of Public Works and Transportation.**

- c. **Provide a standard sidewalk along the subject site’s entire frontage of Brandywine Road, unless modified by the Department of Permitting, Inspections and Enforcement or the Department of Public Works and Transportation.**
- d. **Provide bicycle parking at the commercial space. The number and location will be determined with the DSP.**

Sidewalks are reflected along both sides of most internal roads on the submitted PPS. Two additional sidewalk segments are approved with this application, to provide a more comprehensive network consistent with the policies of the 2009 *Approved Countywide Master Plan of Transportation* (MPOT). A sidewalk is also shown along the site’s frontage of Brandywine Road. Bicycle parking will be evaluated with the detailed site plan (DSP).

6. **Community Planning**—The *Plan Prince George’s 2035 Approved General Plan* (Plan 2035) locates the subject site in the Established Communities Growth Policy area. The vision for the Established Communities area is to accommodate context-sensitive infill and low- to medium-density development.

The 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment* (Subregion 5 Master Plan) recommends Residential Low future land uses on the subject property, described as “Residential areas up to 3.5 dwelling units per acre. Primarily single-family detached dwellings.”

Pursuant to Section 24-121(a)(5), this application is not required to conform to the Subregion 5 Master Plan because Council Resolution CR-81-2013 reclassified the subject property to the M-X-T Zone, thus rendering the master plan recommendations for future residential low land use on the site no longer applicable.

The Subregion 5 Master Plan rezoned the property from the R-R Zone to the M-X-T Zone. The discussion of this zoning change (19) in the SMA states, “There had been a development Node indicated on the 2002 County Approved General Plan map at the intersection of planned A-65 and MD 5 which was removed from the General Plan as an amendment with the approval of the Subregion 5 Master Plan. Public Hearing (4/11/13) Exhibit 725 requested the zoning and land use be changed to mixed-use. District Council resolution CR-81-2013, Revision Four, directed that the zoning of this site be changed from R-R to M-X-T.” (page 188)

7. **Stormwater Management**—A Stormwater Management (SWM) Concept Approval Letter (No. 60393-2017-00) and associated plan were submitted with the application for this site. The approval was issued on August 22, 2018 for this project from the Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE). The plan proposes to construct grass swales, micro-bioretenion ponds, and submerged gravel wetland structures. A SWM fee of \$102,250.00 for on-site attenuation/quality control measures is required. Development must be in accordance with the approved SWM concept plan, or subsequent revisions, to ensure that on-site or downstream flooding do not occur.

8. **Parks and Recreation**—The PPS was reviewed and evaluated for conformance with the requirements and regulations of the Subregion 5 Master Plan, the *Formula 2040 Functional Master Plan for Parks, Recreation and Open Space*, the Subdivision Regulations, and CSP-17003, as they pertain to public parks and recreation.

The subject development is comprised of 72.23 acres of land and is zoned M-X-T. The subject property is not adjacent to any existing Maryland-National Capital Park and Planning Commission (M-NCPPC) owned parkland.

Section 24-134 of the Subdivision Regulations requires mandatory dedication of parkland on all residential subdivisions. The mandatory dedication requirement for this development is approximately 5.66 acres. However, mandatory dedication of parkland is not required due the size, shape, and utility of the land to be dedicated.

It was determined that, per Section 24-135(b) of the Subdivision Regulations, the mandatory dedication requirements can be met by the provision of on-site private recreational facilities. The PPS identifies several potential locations for the siting of recreational facilities. The details for the on-site recreation facilities package shall be reviewed and approved at the time of DSP for this project, in accordance with Section 24-135.

The Planning Board finds that the provision of on-site private recreational facilities will address the recreational needs of the future residents of this development.

9. **Trails**—This PPS was reviewed for conformance with MPOT and the Subregion 5 Master Plan, in order to implement planned trails, bikeways, and pedestrian improvements. The site is in the Branch Avenue Corridor, and is therefore, subject to the requirements of Section 24-124.01 of the Subdivision Regulations and the Transportation Review Guidelines, Part 2, at the time of PPS.

Two master plan trail/bikeway issues impact the application. Master plan trails, or bikeways are recommended along Brandywine Road and A-65. Text from MPOT on each of these proposals is copied below:

A-65 Shared-Use Sidepath: This trail will provide nonmotorized access through a rapidly developing portion of southern Prince George’s County. Segments of the trail have been approved for construction as part of recent development applications. The trail will also provide connectivity with several planned stream valley trails (MPOT, page 32).

Brandywine Road Sidewalks and Bike Lanes: Currently, a variety of cross sections exist along Brandywine Road and sidewalks are missing along many segments.

Continuous sidewalks will provide a safe pedestrian route between adjoining residential communities, to several shopping centers, and to both the Tinkers Creek and Piscataway Creek Stream Valley Trails. Brandywine Road also provides a

parallel route to MD 5 for pedestrians and bicyclists.

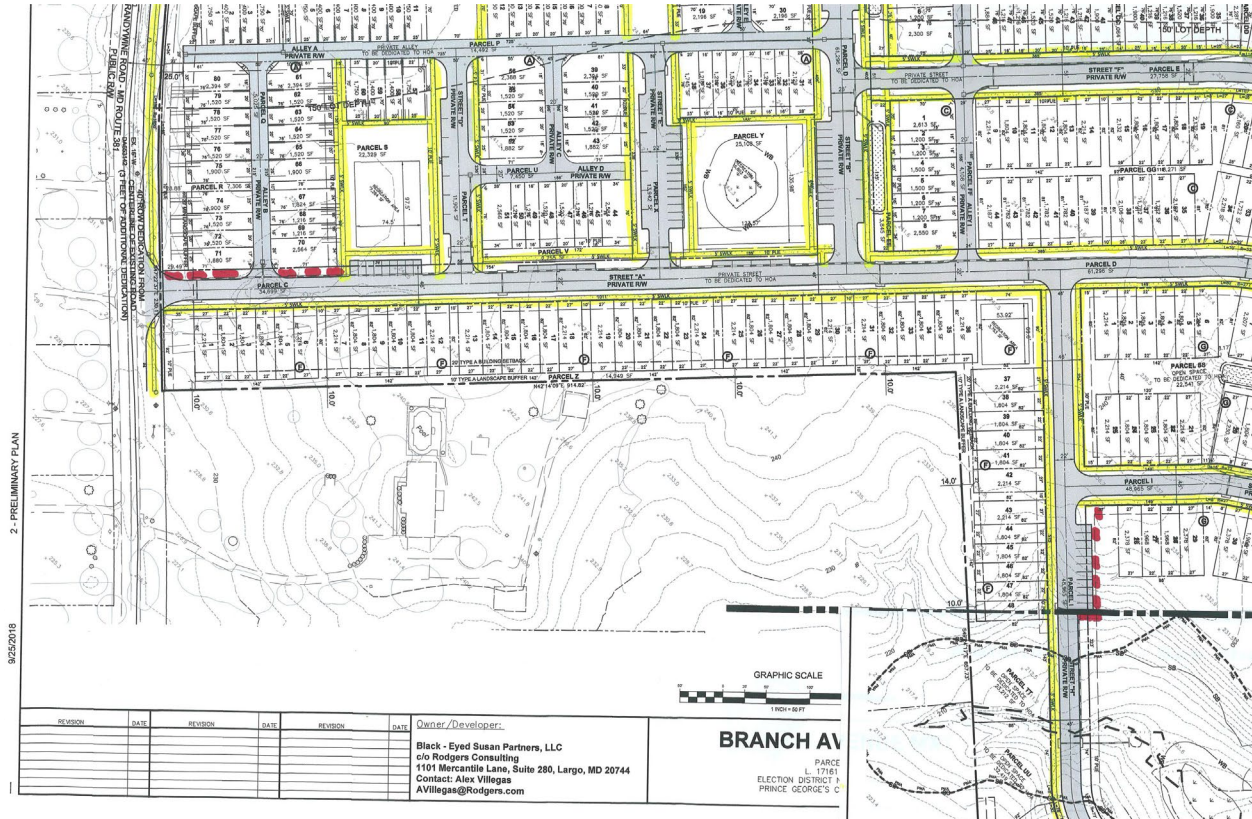
Evaluate the need for sidewalks along MD 381 outside the segment within the Developing Tier (MPOT, page 32).

Sidewalks are appropriate along internal roads on the subject site. The Complete Streets element of MPOT reinforces the need for these recommendations and includes the following policies regarding sidewalk construction and the accommodation of pedestrians:

POLICY 1: Provide standard sidewalks along both sides of all new road construction within the Developed and Developing Tiers.

POLICY 2: All road frontage improvements and road capital improvement projects within the developed and Developing Tiers shall be designed to accommodate all modes of transportation. Continuous sidewalks and on-road bicycle facilities should be included to the extent feasible and practical.

Sidewalks are reflected along both sides of most internal roads on the PPS. Two additional sidewalk segments were approved by the Planning Board to provide a more comprehensive network consistent with policies of MPOT. One sidewalk section along the north side of Street A from Brandywine Road to Parcel S, and a second along the east side of Street H from Street C, to the southern end of the perpendicular parking, adjacent to Block G, Lot 26.



Review of the Bicycle and Pedestrian Impact Statement (BPIS) and Proposed Off-Site Improvements

Due to the location of the subject site within the MD 5 Corridor, the application is subject to CB-2-2012, which includes a requirement for the provision of off-site bicycle and pedestrian improvements. Section 24-124.01(c) includes the following guidance regarding off-site improvements:

- (c) **As part of any development project requiring the subdivision or re-subdivision of land within Centers and Corridors, the Planning Board shall require the developer/property owner to construct adequate pedestrian and bikeway facilities (to the extent such facilities do not already exist) throughout the subdivision and within one-half mile walking or bike distance of the subdivision if the Board finds that there is a demonstrated nexus to require the applicant to connect a pedestrian or bikeway facility to a nearby destination, including a public school, park, shopping center, or line of transit within available rights of way.**

CB-2-2012 also included specific guidance regarding the cost cap for the off-site improvements. The amount of the cost cap is determined pursuant to Section 24-124.01(c):

The cost of the additional off-site pedestrian or bikeway facilities shall not exceed thirty-five cents (\$0.35) per gross square foot of proposed retail or commercial development proposed in the application and Three Hundred Dollars (\$300.00) per unit of residential development proposed in the application, indexed for inflation.

Based on Section 24-124.01(c), and the 407 townhouses, 240 assisted living units, and 12,000 square feet of commercial development, the cost cap for the application is \$198,600.

Section 24-124.01 also provides specific guidance regarding the types of off-site bicycle and pedestrian improvements that may be required, per Section 24-124.01(d):

- (d) Examples of adequate pedestrian and bikeway facilities that a developer/property owner may be required to construct shall include, but not be limited to (in descending order of preference):**
- 1. Installing or improving sidewalks, including curbs and gutters, and increasing safe pedestrian crossing opportunities at all intersections;**
 - 2. Installing or improving streetlights;**
 - 3. Building multi-use trails, bike paths, and/or pedestrian pathways and crossings;**
 - 4. Providing sidewalks or designated walkways through large expanses of surface parking;**
 - 5. Installing street furniture (benches, trash receptacles, bicycle racks, bus shelters, etc.); and**
 - 6. Installing street trees.**

A scoping meeting was held with the applicant on December 6, 2018. Enhancements along the bus route serving the site (Bus Route 36) were identified as possible improvements, as were sidewalk and Americans with Disabilities Act (ADA) retrofits along Brandywine Road. At the time of SDRC, improvements were also suggested that would connect the site to the Brandywine Road/Branch Avenue interchange, and the park and ride funded by the Maryland State Highway Administration (SHA Project PG175_51).

Opportunities for sidewalk retrofits are limited along Brandywine Road. Section 24-124.01 is clear that all off-site improvements need to be constructed within rights-of-way already owned by the operating agency. The areas of Brandywine Road where sidewalks are not present do not currently have the dedicated right-of-way necessary to accommodate the improvements. Sidewalk construction along these segments of road will have to be made when the necessary public right-of-way is acquired.

The applicant's BPIS submission identified two bus stops along Bus Route 36 that need shelters. Both stops are located within 200 feet of the subject property and will serve future residents of the site.

Section (f) requires an exhibit of all off-site improvements at the time of DSP.

- (f) If a conceptual or detailed site plan approval is required for any development within the subdivision, the developer/property owner shall include, in addition to all other required information in the site plan, a pedestrian and bikeway facilities plan showing the exact location, size, dimensions, type, and description of all existing and proposed easements and rights-of-way and the appurtenant existing and proposed pedestrian and bikeway facilities throughout the subdivision and within the designated walking or biking distance of the subdivision specified in Subsection (c) of this Section, along with the location, types, and description of major improvements, property/lot lines, and owners that are within fifty (50) feet of the subject easements and rights-of-way.**

An exhibit showing the location, limits, and details of off-site improvements will be required at the time of DSP, pursuant to Section (f).

Additional sidewalk, ADA, and/or crosswalk improvements necessary to access the bus stops may be required at the time of DSP, upon coordination with the Department of Public Works & Transportation, Office of Transit.

Demonstrated nexus between the subject application and the off-site improvements

Section 24-124.01(c) requires that a demonstrated nexus be found with the subject application, in order for the Planning Board to require the construction of off-site pedestrian and bikeway facilities. This section is copied below, and the demonstrated nexus between each of the proffered off-site improvements and the subject application is summarized below:

- (c) As part of any development project requiring the subdivision or re-subdivision of land within Centers and Corridors, the Planning Board shall require the developer/property owner to construct adequate pedestrian and bikeway facilities (to the extent such facilities do not already exist) throughout the subdivision and within one-half mile walking or bike distance of the subdivision if the Board finds that there is a demonstrated**

nexus to require the applicant to connect a pedestrian or bikeway facility to a nearby destination, including a public school, park, shopping center, or line of transit within available rights of way.

The improvements proffered by the applicant will serve future residents of the subject site by providing shelters at the closest existing bus stops to the subject site along Bus Route 36. The shelters will provide a protected area for residents to stand while waiting for transit along Brandywine Road.

Finding of Adequate Bicycle and Pedestrian Facilities:

CB-2-2012 requires that the Planning Board make a finding of adequate bicycle and pedestrian facilities at the time of PPS. CB-2-2012 is applicable to preliminary plans within designated Centers and Corridors. The subject application is located within the designated Branch Avenue corridor, as depicted on the Adequate Public Facility Review Map of Plan 2035. CB-2-2012 also included specific guidance on the criteria for determining adequacy, as well as what steps can be taken if inadequacies need to be addressed.

Sections 24-124.01(b) (1) and (2) include the following criteria for determining adequacy:

- (b) Except for applications for development project proposing five (5) or fewer units or otherwise proposing development of 5,000 or fewer square feet of gross floor area, before any preliminary plan may be approved for land lying, in whole or part, within County Centers and Corridors, the Planning Board shall find that there will be adequate public pedestrian and bikeway facilities to serve the proposed subdivision and the surrounding area.**
 - (1) The finding of adequate public pedestrian facilities shall include, at a minimum, the following criteria:**
 - (A) The degree to which the sidewalks, streetlights, street trees, street furniture, and other streetscape features recommended in the Countywide Master Plan of Transportation and applicable area master plans or sector plans have been constructed or implemented in the area; and**
 - (B) the presence of elements that make is safer, easier and more inviting for pedestrians to traverse the area (e.g., adequate street lighting, sufficiently wide sidewalks on both sides of the street buffered by planting strips, marked crosswalks, advance stop lines and yield lines, “bulb out” curb extensions, crossing signals, pedestrian refuge medians, street trees, benches, sheltered commuter bus stops, trash receptacles, and signage. (These elements address many of the design features that make for a safer and more inviting streetscape and pedestrian environment. Typically, these are the types of facilities and amenities covered in overlay zones).**

- (2) **The finding of adequate public bikeway facilities shall, at a minimum, include the following criteria:**
- (A) **the degree to which bike lanes, bikeways, and trails recommended in the Countywide Master Plan of Transportation and applicable area master plans or sector plans have been constructed or implemented in the area;**
 - (B) **the presence of specially marked and striped bike lanes or paved shoulders in which bikers can safely travel without unnecessarily conflicting with pedestrians or motorized vehicles;**
 - (C) **the degree to which protected bike lanes, on-street vehicle parking, medians or other physical buffers exist to make it safer or more inviting for bicyclists to traverse the area; and**
 - (D) **the availability of safe, accessible and adequate bicycle parking at transit stops, commercial areas, employment centers, and other places where vehicle parking, visitors, and/or patrons are normally anticipated.**

The subject application, with conditions, includes sidewalks along both sides of all internal roads, consistent with the Complete Street policies of MPOT. Furthermore, plans include the master plan trail along the site's portion of A-65, and a continuous sidewalk along the site's frontage of Brandywine Road, consistent with the recommendations of MPOT. The bus shelters proffered off-site will enhance the environment for transit users by giving them protected places to stand while waiting at bus stops that will serve the site. Based on the facilities proposed both on-and off-site, the Planning Board finds that the bicycle and pedestrian facilities are adequate, per the requirements of Section 24-124.01.

10. **Transportation**—The PPS is required to subdivide an existing parcel into 407 lots to support the development of 407 townhomes, as well as an assisted living facility and space for commercial facilities. Transportation-related findings are made with this application, along with any determinations related to dedication, access, and general subdivision layout. Access and circulation are provided by means of private streets and public roadways.

The subject property is located within Transportation Service Area 2, as defined in Plan 2035. As such, the subject property is evaluated according to the following standards:

Links and signalized intersections: Level of Service D, with signalized intersections operating at a critical lane volume (CLV) of 1,450 or better. Mitigation per Section 24-124(a)(6), is permitted at signalized intersections within any tier subject to meeting the geographical criteria in the “Transportation Review Guidelines, Part 1” (Guidelines).

Unsignalized intersections: The procedure for unsignalized intersections is not a true test of adequacy but rather an indicator that further operational studies need to be conducted. A three-part process is employed for two-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the *Highway Capacity Manual* (Transportation Research Board) procedure; (b) the maximum approach volume on the minor streets is computed if delay exceeds 50 seconds, (c) if delay exceeds 50 seconds and at least one approach volume exceeds 100, the CLV is computed. A two-part process is employed for all-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the *Highway Capacity Manual* (Transportation Research Board) procedure; (b) if delay exceeds 50 seconds, the CLV is computed.

Analysis of Traffic Impacts

This PPS approved townhouses, an assisted living facility, and 12,000 square feet of commercial development. The table below summarizes trip generation in each peak-hour that will be used in reviewing traffic and developing a trip cap for the site:

Trip Generation Summary- 4-18028: Branch Avenue MXT							
Proposed Use		AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Townhouses	414	58	232	290	215	116	331
Assisted Living (ITE-254)	240 beds	29	14	43	35	35	70
Commercial (square feet)	12,000	98	60	158	54	59	113
<i>Less pass-by 0% AM, 34% PM</i>					-18	-20	-38
Total Traffic		185	306	491	286	190	476

A March 2019 traffic impact study was submitted and accepted as part of the application documentation. The following tables represent results of the analyses of critical intersections under existing, background, and total traffic conditions.

EXISTING CONDITIONS		
Intersections	AM	PM
	(LOS/CLV)	(LOS/CLV)
MD 5 and Surratts Road	F/1840	C/1285
MD 5 and Burch Hill Road *	>50+ seconds	>50+ seconds
MD 5 and Site Access (right-in, right-out)	No conflicting movements	
MD 5 and Moores Road *	>50+ seconds	>50+ seconds
Brandywine Road and Burch Hill Road *	<50 seconds	<50 seconds
Brandywine Road and Site Access *	N/A	N/A
Brandywine Road and Moores Road *	<50 seconds	<50 seconds
<p>* Unsignalized intersections are analyzed using the Highway Capacity Software. The results show the intersection delay measured in seconds/vehicle. A maximum delay of 50 seconds/car is deemed acceptable, if delay exceeds 50 seconds and at least one approach volume exceeds 100, the critical lane volume (CLV) is computed. A two-part process is employed for all-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the Highway Capacity Manual (Transportation Research Board) procedure; (b) if delay exceeds 50 seconds, the CLV is computed. If the CLV falls below 1,150 for either type of intersection, this is deemed to be an acceptable operating condition.</p>		

The traffic study identified seven background developments whose impact would affect some, or all of the study intersections. In addition, a growth of one percent over six years was also applied to the traffic volumes along MD 5. A second analysis was done to evaluate the impact of the background developments. The analysis revealed the following results:

BACKGROUND CONDITIONS		
Intersections	AM	PM
	(LOS/CLV)	(LOS/CLV)
MD 5 and Surratts Road	F/2022	C/1432
MD 5 and Burch Hill Road **	>50 seconds	>50 seconds
MD 5 and Site Access (right-in, right-out)	No conflicting movements	
MD 5 and Moores Road *	>50 seconds	>50 seconds
Brandywine Road and Burch Hill Road *	<50 seconds	<50 seconds
Brandywine Road and Site Access *	N/A	N/A
Brandywine Road and Moores Road *	<50 seconds	<50 seconds
<p>* Unsignalized intersections are analyzed using the Highway Capacity Software. The results show the intersection delay measured in seconds/vehicle. A maximum delay of 50 seconds/car is deemed acceptable. If delay exceeds 50 seconds and at least one approach volume exceeds 100, the CLV is computed. A two-part process is employed for all-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the Highway Capacity Manual (Transportation Research Board) procedure; (b) if delay exceeds 50 seconds, the CLV is computed. If the CLV falls below 1,150 for either type of intersection, this is deemed to be an acceptable operating condition.</p> <p>** Unsignalized intersections where the three-tier test has failed.</p>		

Regarding the total traffic scenario, the trip generation, as computed above, was applied to the local transportation network. Total traffic analysis indicates the following results:

TOTAL CONDITIONS		
Intersections	AM	PM
	(LOS/CLV)	(LOS/CLV)
MD 5 and Surratts Road <i>With mitigation improvement (>100% mitigated)</i>	F/2101 F/1770	E/1505 D/1423
MD 5 and Burch Hill Road **	F/2484**	F/1781**
MD 5 and Site Access (right-in, right-out)	No conflicting movements	
MD 5 and Moores Road **	F/1819**	F/1662**
Brandywine Road and Burch Hill Road *	<50 seconds	<50 seconds
Brandywine Road and Site Access *	<50 seconds	<50 seconds
Brandywine Road and Moores Road *	<50 seconds	<50 seconds
<p>* Unsignalized intersections are analyzed using the Highway Capacity Software. The results show the intersection delay measured in seconds/vehicle. A maximum delay of 50 seconds/car is deemed acceptable. If delay exceeds 50 seconds and at least one approach volume exceeds 100, the CLV is computed. A two-part process is employed for all-way stop-controlled intersections: (a) vehicle delay is computed in all movements using the Highway Capacity Manual (Transportation Research Board) procedure; (b) if delay exceeds 50 seconds, the CLV is computed. If the CLV falls below 1,150 for either type of intersection, this is deemed to be an acceptable operating condition.</p> <p>** Unsignalized intersections where the three-tier test has failed using the CLV procedure.</p>		

Results show that there are still some intersections which will operate inadequately even with some improvements by the applicant.

The subject property is located within Planning Area 85A and is affected by the Brandywine Road Club. Specifically, Council Resolution CR-9-2017 indicates the following:

- a. Establishes the use of the Brandywine Road Club for properties within Planning Areas 85A and 85B as a means of addressing significant and persistent transportation deficiencies within these planning areas.
- b. Establishes a list of projects for which funding from the Brandywine Road Club can be applied.
- c. Establishes standard fees by development type associated with the Brandywine Road Club to be assessed on approved development.

This resolution works in concert with Council Bill CB-22-2015, which permits participation in roadway improvements as a means of demonstrating adequacy for transportation, as required in Section 24-124. Specifically, CB-22-2015 allows the following:

- a. Roadway improvements participated in by the subdivider can be used to alleviate any inadequacy as defined by the Guidelines. This indicates that sufficient information must be provided to demonstrate that there is an inadequacy.

- b. In order to use CB-22-2015, the subject property must be located in an area for which a road club was established prior to November 16, 1993. In fact, the Brandywine Road Club was included in Council Resolution CR-60-1993, adopted on September 14, 1993, and it was developed and in use before that date.

Pursuant to CR-9-2017, the Brandywine Road Club fee for the subject application will be \$1,338 per townhouse dwelling unit, \$999 per residential unit for the assisted living facility, and \$2.07 per gross floor area for the commercial facility. The fee will be indexed by appropriate cost indices to be determined by DPIE. Pursuant to Prince George's County Council Bill CB-22-2015, once the appropriate payment is made to the satisfaction of DPIE, no further obligation will be required of the applicant regarding the fulfillment of transportation adequacy requirements of Section 24-124(a).

Master Plan Site Review

The property is located in an area where development policies are governed by the Subregion 5 Master Plan, and MPOT, November 2009. One of the recommendations from the master plans was the construction of a new arterial road (A-65). The width of the A-65 alignment fits entirely within the confines of the subject property and is planned to extend onto an adjacent property to the east before connecting to MD 5.

The alignment of A-65 is accurately depicted on the site plan within the recommended 120 feet of right-of-way. Based on recommendation from DPIE, the plan shows a 36-foot section of the ultimate master plan road, until such time that the ultimate master plan cross section will be needed.

Due to environmental features, it is not feasible for all the development pods to be contiguous within the site. The commercial and assisted living development pod is all located along the eastern end of the property with direct, but limited access to MD 5. MD 5 is a proposed freeway and there are no plans to grant a median break along MD 5. Consequently, the access for these uses will be a right-in, right-out only.

Private roads and alleys are permitted in the M-X-T Zone, pursuant to Section 24-128(b)(7)(A), provided that pavement widths are a minimum of 22 and 18 feet in width, respectively. The application conforms to this requirement. All other aspects of the site regarding access and layout are deemed to be acceptable.

Variation Request 24-121(a)(3)—The subject property fronts on a master plan freeway, to which access is limited, in accordance with Section 24-121(a)(3). The applicant has filed a variation requesting authorization to provide access from an arterial or higher classification road. Section 24-121(a)(3) states the following:

Section 24-121. Planning and design requirements.

- (a) **The Planning Board shall require that proposed subdivisions conform to the following:**

- (3) **When lots are proposed on land adjacent to an existing or planned roadway of arterial or higher classification, they shall be designed to front on either an interior street or a service road. As used in this Section, a planned roadway or transit right-of-way shall mean a road or right-of-way shown in a currently approved State Highway plan, General Plan, or master plan. If a service road is used, it shall connect, where feasible, with a local interior collector street with the point of intersection located at least two hundred (200) feet away from the intersection of any roadway of collector or higher classification.**

Section 24-113 sets forth the required findings for approval of a variation request:

Section 24-113 Variations

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle and Section 9-206 of the Environment Article; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

- (1) **The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;**

The unnamed tributary of Piscataway Creek divides the subject property into two separate areas, with the eastern portion only having access to MD 5. MD 5, while a limited access roadway, is planned for future improvements, which include a service road, which will extend along the frontage of the subject property. The construction of a portion of this service road along the property frontage, and access to that service road, will allow access to, and use of a substantial area of land that would otherwise be unusable. This temporary, limited access will be designed and constructed, in accordance with SHA standards, with full length acceleration and deceleration lanes to promote safe access to and from the service road via the temporary access. The service road and temporary access will not impact any other property. As such, the approved variation will not be detrimental to public safety, health, or welfare, or injurious to other property.

- (2) **The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;**

The conditions causing the request for this variation are unique to the subject site. Access to the eastern development pod can only occur from MD 5, due to the extensive environmental feature that bisects the property. The site fronts on a freeway that is to have service roads constructed along its frontage. This situation provides a unique opportunity for the applicant to be able to access its property by partially constructing an improvement already planned by SHA. These conditions are unique to the subject property and are not applicable generally to other properties.

- (3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and**

The variation from Section 24-121(a)(3) is unique to the Subdivision Regulations, and under the sole authority of the Planning Board. Therefore, the variation does not constitute a violation of any other applicable law, ordinance, or regulation.

- (4) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;**

The portion of the property which lies between the unnamed tributary of Piscataway Creek and MD 5 contains over 10 acres of land, which is approximately 14 percent of the subject property. If the strict letter of these regulations is carried out, this area would be rendered unusable, which would result in a particular hardship to the owner.

- (5) In the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where multifamily dwellings are proposed, the Planning Board may approve a variation if the applicant proposes and demonstrates that, in addition to the criteria in Section 24-113(a), above, the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George's County Code.**

This is not applicable because the site is zoned M-X-T.

The Planning Board finds that the site is unique to the surrounding properties and the variation request is supported by the required findings. The Planning Board also finds that approval of the applicant's request will not have the effect of nullifying the intent and purpose of the Subdivision Regulations, which is to guide development according to the Plan 2035.

Therefore, the Planning Board approves the variation from Section 24-121(a)(3), to allow access to MD 5.

Variation Request 24-128(b)(7)(A)—The townhouse lots are to be accessed via a network of private roads and alleys. The application includes 214 townhouse lots accessed by alleys, which front on either private streets or open spaces. The remaining townhouse lots are accessed directly from private streets and none of the lots have frontage on a public street. The applicant filed a variation to request authorization for those lots accessed by an alley without frontage on a public right-of-way. Section 24-128(b)(7)(A) states the following:

Section 24-128. - Private roads and easements.

- (b) The Planning Board may approve preliminary plans of development containing private roads, rights-of-way, alleys, and/or easements under the following conditions:**
- (7) In Comprehensive Design and Mixed Use Zones:(A)For land in the V-L, V-M, R-L, R-S, R-M, R-U, M-U-I, L-A-C, M-A-C, M-X-C, M-U-TC, and M-X-T Zones, the Planning Board may approve a subdivision (and all attendant plans of development) with private roads to serve attached single-family dwellings, two-family dwellings, and three-family dwellings, but not single-family detached or multifamily dwellings, in accordance with the requirements of Subsections (e) and (f) of Section 27-433 of the Zoning Ordinance, except as hereinafter provided. In all of the above zones, and in the R-R Zone when developed as a cluster subdivision, the Planning Board may approve a subdivision with alleys to serve any permitted use, provided the lot has frontage on and pedestrian access to a public right-of-way. The District Council may disapprove the inclusion of alleys during the consideration of the detailed site plan for a cluster subdivision. For the purposes of this Section, an "alley" shall mean a road providing vehicular access to the rear or side of abutting lots, and which is not intended for general traffic circulation.**
- (i) The pavement width of private roads may be reduced to not less than a minimum of twenty-two (22) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, hierarchical street system for a development.**
- (ii) The pavement width of private alleys shall be not less than eighteen (18) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, vehicular access to individual lots. Since alleys only provide vehicular access to lots with frontage on a public street, alleys shall not be required to be improved with street trees or curb and gutter, unless a drainage problem has been identified by the Department of Permitting, Inspections, and Enforcement or the Department of Public Works and Transportation.**

Section 24-113 sets forth the required findings for approval of a variation request:

Section 24-113 Variations

(a) Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle and Section 9-206 of the Environment Article; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:

(1) The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;

The private streets are designed to accommodate fire, rescue, and service vehicles. Alleys that serve units that do not also front onto a private street will have 22-foot pavement widths. The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property.

(2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;

The application includes 214 townhouse lots accessed by alleys, which front on either private streets or open spaces. The remaining townhouse lots are accessed directly from private streets and none of the lots have frontage on a public street. The Prince George's County Department of Public Works and Transportation does not maintain streets where townhouse driveways access the streets directly, which results in the need to provide private streets within the development. The site is encumbered by a stream and the A-65 right-of-way. Other properties do not have similar conditions, which are unique to this site. The applicant requested approval of the variation, due to the circumstances that are specific to this site, including its shape and topographic conditions.

(3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and

The variation from Section 24-128(b)(7)(A) is unique to the Subdivision Regulations and under the sole authority of the Planning Board. Therefore, the variation does not constitute a violation of any other applicable law, ordinance, or regulation.

- (4) **Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;**

The portion of the property which lies between the unnamed tributary of Piscataway Creek and MD 5 contains over 10 acres of land, which is approximately 14 percent of the subject property. The site is also encumbered by the A-65 right-of-way. A neo-traditional development, with private roads, alleys, driveways, and garages to serve the circulation and parking needs of the future homeowners was approved. On-street parking is provided for overflow and guests. These conditions create an environment that is unique to the property and generally not applicable to other properties.

- (5) **In the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where multifamily dwellings are proposed, the Planning Board may approve a variation if the applicant proposes and demonstrates that, in addition to the criteria in Section 24-113(a), above, the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George’s County Code.**

This is not applicable because the site is zoned M-X-T.

The Planning Board finds that the site is unique to the surrounding properties and the variation request is supported by the required findings. The Planning Board also finds that approval of the applicant’s request will not have the effect of nullifying the intent and purpose of the Subdivision Regulations, which is to guide development according to Plan 2035.

Therefore, the Planning Board approves the variation from Section 24-128(b)(7)(A), to allow 214 lots to have access via an alley without frontage on a public right-of-way.

Based on the preceding findings, adequate transportation facilities will exist to serve the subdivision, as required in accordance with Section 24-124 of the Subdivision Regulations, with the approved conditions.

11. **Schools**—This PPS has been reviewed for its impact on school facilities, in accordance with Section 24-122.02 of the Subdivision Regulations. The results are as follows:

Impact on Affected Public School Clusters
 Multifamily Units

Affected School Clusters	Elementary School Cluster 6	Middle School Cluster 6	High School Cluster 6
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Dwelling Units	407 DU	407 DU	407 DU
Pupil Yield Factor	0.145	0.076	0.108
Subdivision Enrollment	59.0	31.0	44.0
Actual Enrollment in 2018	4,795	1,923	2,471
Total Enrollment	4,801	1,917	2,478
State Rated Capacity	6,401	2,490	3,754
Percent Capacity	75%	77%	66%

Section 10-192.01 of the County Code establishes a school facilities surcharge with an annual adjustment for inflation. The current school facilities surcharge amount is \$16,698, as this project falls outside of the I-495 Capital Beltway. This fee is to be paid at the time of issuance of each building permit.

The commercial portion of the subdivision is exempt from a review for schools because it is a nonresidential use.

12. **Public Facilities**—In accordance with Section 24-122.01, water and sewer, police, and fire and rescue facilities are found to be adequate to serve the subject site, as outlined in a memorandum from the Special Projects Section dated September 5, 2019 (Saunders Hancock to Turnquest), incorporated by reference herein.
13. **Use Conversion**—The total development included in this PPS includes 407 single-family attached dwelling units, a 240-unit assisted living facility, and 12,000 square feet of commercial development in the M-X-T Zone. If a substantial revision to the mix of uses on the subject property is proposed that affects Subtitle 24 adequacy findings, as set forth in the resolution of approval and reflected on the PPS, that revision of the mix of uses shall require approval of a new PPS, prior to approval of any building permits.
14. **Public Utility Easement (PUE)**—In accordance with Section 24-122(a), when utility easements are required by a public company, the subdivider shall include the following statement in the dedication documents recorded on the final plat:

“Utility easements are granted pursuant to the declaration recorded among the County Land Records in Liber 3703 at Folio 748.”

The standard requirement for PUEs is 10 feet wide along both sides of all public rights-of-way. The subject site fronts on public rights-of-way Brandywine Road, master plan right-of-way A-65, and Central Branch Avenue. There are private roads, which provide circulation throughout the residential portion on the western portion of the site. Section 24-128(b)(12) requires that 10-foot-wide PUEs be provided along one side of all private streets. The required PUEs are delineated on the PPS.

15. **Historic**—An unnamed tributary to Piscataway Creek runs south to north along the eastern portion of the property, with steep slopes on either side. The 1938 aerial photographs indicate that

the central and southwestern portions of the property were used for agricultural purposes at that time. By 1965, the agricultural operations on the subject property were abandoned and the parcel was completely wooded. The property was logged sometime in the recent past.

The subject property was part of several land grants known as Piscataway Forest, Enclosure, and Prevention. Portions of the property were owned in the eighteenth century by James Bonifant and Samuel Townshend. Samuel Townshend's son, William Townshend, married Keziah Bonifant, daughter of James Bonifant. William Townshend acquired the land within the subject property, in the early nineteenth century. By 1828, William Townshend owned a plantation comprising 804 acres, and held 10 enslaved laborers. By 1840, William Townshend held 27 enslaved laborers on his property. William Townshend died in 1849 and was buried in a family cemetery located on the subject property. His first wife is likely buried in the family cemetery as well, but her grave was not marked. William Townshend's second wife, Fidelia Belt Townshend, and a daughter, Eleanor West Townshend Harrison, are also buried in the family cemetery. William Townshend's father and mother are also believed to be buried on the site, but their graves are not marked.

A Phase I archeology survey was conducted on the subject property in April and May 2017. A total of 616 shovel test pits were investigated on the property, 22 of which contained cultural material. No intact features or standing structures were noted on the property. Four archeological sites, 18PR1106–18PR1109, were delineated in the upland area of the property. These included a nineteenth-century domestic occupation, a nineteenth-century cemetery, and two trash scatters likely associated with the house site. Only site 18PR1106 was thought to contain potentially significant information. The Townshend Cemetery is in an area not planned for development.

A Phase II archeological evaluation was conducted on site 18PR1106, between October and December 2018. The applicant submitted a draft Phase II archeological report for site 18PR1106 with the subject application. The report concludes that site 18PR1106 contains significant intact archeological deposits compatible with an 1810 to 1870 domestic occupation. The report recommends that the archeological site be preserved in place.

The findings and recommendations of the Phase I and Phase II reports indicate that site 18PR1106 contains significant information on the nineteenth-century occupation of the site by the William Townshend family. Site 18PR1106 shall be preserved in place, and the open space will provide for passive recreation on Parcel AB, as shown on the plan. No ground disturbance will be allowed on this parcel. An archeological easement shall be recorded on this parcel.

Sites 18PR1107 and 18PR1108 did not contain significant cultural information and therefore, no further work is required on these sites. Sites 18PR1107 and 18PR1108 are not likely to provide significant information on the prehistory or history of Prince George's County. Therefore, no further work shall be required on these sites.

Site 18PR1109 is the Townshend Family Cemetery. The stones have been displaced and several holes have been excavated. At the time of subdivision, the applicant will have to comply with Section 24-135.02 for the protection and long-term preservation of the Townshend Family Cemetery. The plan shows the cemetery located in open space. The applicant has provided proof

that the corners of the cemetery have been staked in the field and an inventory of existing cemetery elements and their condition. The applicant has also provided a 50-foot buffer around the cemetery on the plans. The applicant has satisfied Section 24-135.02(a).1, 2, and 3. The applicant will address Section 24-135.02(a).4 and 5 and 24-135.02(b) with the DSP. Details of an appropriate enclosure for the cemetery and arrangements for its future protection, maintenance, and access shall be provided at the time of DSP.

The boundaries of the Townshend Cemetery (18PR1108) were identified in the archeological survey. To ensure that there were no burials outside of the area where the stones were found, six trenches were excavated with a small backhoe with a flat-bladed bucket. No additional burials or burial shafts were encountered. To protect the Townshend Cemetery during construction, the applicant shall install a super silt fence around the limits of the burial ground.

The subject property does not contain and is not adjacent to any Prince George’s County Historic Sites or Resources.

16. **Environmental**—The following applications and associated plans were previously reviewed for the subject site:

Review Case #	Associated Tree Conservation Plan #	Authority	Status	Action Date	Resolution Number
NRI-120-2017	N/A	Staff	Approved	7/24/2017	N/A
NRI-120-2017-01	N/A	Staff	Approved	8/30/2018	N/A
CSP-17003	TCP1-008-2018	Planning Board	Approved	10/11/2018	18-98
4-18028	TCP1-008-2018-01	Planning Board	Pending	Pending	Pending

The previous reviews of the site were for a larger land area, which included a triangular shaped parcel (2.62 acres), recorded in Prince George’s County Land Records, in Liber 39313, folio 573, also owned by the same owner, east of the site across Branch Avenue. This “01” revision does not include this triangular parcel.

Approved Activity

This PPS and a revised Type 1 Tree Conservation Plan (TCP1-008-2018-01) are approved for the construction of a mixed-use development consisting of 407 townhome units, a 240-unit assisted living facility, and commercial development.

Grandfathering

This project is subject to the current regulations of Subtitles 24, 25, and 27 that came into effect on September 1, 2010, and February 1, 2012 because the application is for a new PPS.

Plan Prince George’s 2035 Approved General Plan (2014)

The site is located within the Environmental Strategy Area 2 (formerly the Developing Tier) of

the Regulated Environmental Protection Areas Map, as designated by Plan 2035; and the Established Communities of the General Plan Growth Policy Map (2035).

Approved Subregion 5 Master Plan and Sectional Map Amendment (2013)

In the Subregion 5 Master Plan, the Environmental Infrastructure section contains goals, policies, recommendations, and strategies. The following guidelines have been determined to be applicable to the current project. The text in **BOLD** is the text from the master plan and the plain text provides comments on plan conformance.

POLICY 1: Implement the master plan's desired development pattern while protecting sensitive environmental features and meeting the full intent of environmental policies and regulations.

Ensure the new development incorporates open space, environmental sensitive design, and mitigation activities.

Protect, preserve and enhance the identified green infrastructure network within Subregion 5.

The project site contains regulated environmental features, woodland areas, and elements of the *Countywide Green Infrastructure Plan* of the *Approved Prince George's Resource Conservation Plan* (May 2017). The site is required to provide bio-retention and infiltration according to the approved SWM concept letter. The PPS provides 29.5 acres of open space, located throughout the development. The open space locations will be further evaluated at the time of DSP. Impacts to sensitive areas have been limited to those required or necessary for development, such as outfalls and a stream valley trail.

POLICY 2: Encourage the restoration and enhancement of water quality in degraded areas and the preservation of water quality in areas not degraded.

Protect and restore groundwater recharge areas such as wetlands and headwater areas of streams.

This application is for the construction of a residential subdivision, assisted living facility, and commercial area. The SWM design will be reviewed and approved by DPIE to address surface water runoff issues, in accordance with Subtitle 32 Water Quality Resources and Grading Code. This requires that the environmental site design be implemented to the maximum extent practicable. The site has an approved SWM Concept Plan and letter (No. 60393-2017-00), which was submitted with the subject application and proposes grass swales, micro-bioretenion ponds, and submerged gravel wetland ponds.

POLICY 3: Ensure that, to the extent that is possible, land use policies support the protection of the Mattawoman Creek.

Conserve as much land as possible in the rural tier portion of the water shed as natural resource land (forest, mineral, and agriculture).

Minimize impervious surfaces in the Developing Tier portion of the watershed through use of conservation subdivisions and environmentally sensitive design and, especially in the higher density Brandywine Community Center, incorporate best stormwater design practices to increase infiltration and reduce run-off volumes.

The site is not within the Mattawoman Creek watershed or the rural tier. The proposed development will be outside the environmentally sensitive areas except for impacts for one stormwater outfall, one road crossing, sewer line connections, and a tie into an existing sewer manhole. The remaining sensitive areas will be preserved.

POLICY 4: Enhance the county's Critical Area protection management in response to local, regional, and statewide initiatives and legislative changes.

The subject property is not located in the Chesapeake Bay Critical Area.

POLICY 5: Reduce air pollution through transportation demand management (TDM) projects and programs.

Promote "climate-friendly" development patterns through the planning processes and land use decisions.

Increase awareness of the sources of air pollution and green-house gas emissions.

Air quality is a regional issue that is currently being addressed by the Council of Governments.

POLICY 6: Encourage the use of green building techniques that reduce resource and energy consumption.

Development applications for the subject property, which require architectural approval, should incorporate green building techniques and the use of environmentally sensitive building techniques to reduce overall energy consumption. The use of green building techniques and energy conservation techniques should be implemented to the greatest extent possible.

POLICY 7: Ensure that excessive noise-producing uses are not located near uses that are particularly sensitive to noise intrusion.

The development will preserve a large wooded area between the 407 residential lots and the on-site assisted living facility, and commercial development. In the future, these two uses will be connected with a master-planned roadway. During construction, there will be noise-producing activities that will cease after infrastructure and building construction is completed.

Countywide Green Infrastructure Plan

According to the approved *Countywide Green Infrastructure Plan*, most of the site is within regulated areas or evaluation areas within the designated network of the plan, and contains a perennial stream, associated stream buffers, and adjacent woodlands. Impacts are proposed within both the regulated and evaluation areas for the residential development.

The following policies and strategies are applicable to the subject application. The text in **BOLD** is the text from the master plan and the plain text provides comments on plan conformance.

POLICY 1: Preserve, protect, enhance or restore the green infrastructure network and its ecological functions while supporting the desired development pattern of the 2002 General Plan.

Most of the application area is within either regulated or evaluation areas, which are totally wooded. Any development within the on-site woodlands will impact a portion of the green infrastructure network. However, preservation is focused on the areas of highest priority.

POLICY 2: Preserve, protect, and enhance surface and ground water features and restore lost ecological functions.

The site has an approved SWM concept plan, which addresses surface water runoff issues, in accordance with Subtitle 32 Water Quality Resources and Grading Code. The PMA associated with this application are located along the northern and western boundary. The application includes one stormwater outfall, one road crossing, sewer line connections, and a tie into an existing sewer manhole that will impact the PMA. The remaining PMA will be preserved as woodlands.

POLICY 3: Preserve existing woodland resources and replant woodland, where possible, while implementing the desired development pattern of the 2002 General Plan.

The 2002 Approved General Plan has been superseded by the Plan 2035. The property is subject to the WCO. The overall site contains a total of 69.46 acres of net tract woodlands, and 2.77 acres of floodplain woodlands. The plan proposes to clear 58.88 acres of net tract woodland, 0.12 acre of floodplain woodlands, and 0.95 acre of off-site floodplain woodlands. The resultant woodland conservation requirement is 24.71 acres, which will be met with 16.49 acres of on-site preservation and 8.22 acres of off-site woodland credits.

Natural Resources Inventory/Existing Conditions

A Natural Resources Inventory, NRI-120-2017-01, was provided with this application. The TCP1 and PPS show all the required information correctly, in conformance with the NRI.

Woodland Conservation

This property is subject to the provisions of the WCO because the property is greater than 40,000 square feet in size, contains more than 10,000 square feet of existing woodland, and has a previously approved TCP1-008-2018 approved with CSP-17003. A revised TCP1-008-2018-01 was submitted with this PPS.

Based on the revised TCP1, the site contains 72.08 acres of net tract woodland and has a woodland conservation threshold of 10.42 acres (15 percent). The woodland conservation worksheet provides for the clearing of 58.88 acres in the net tract area, 0.12 acre in the floodplain, and 0.95 acre off-site, resulting in a woodland conservation requirement of 24.71 acres. The TCP1 worksheet indicates the requirement is to be met with 16.49 acres of on-site woodland preservation, and 8.22 acres of off-site woodland conservation credits. The forest stand delineation has identified eight specimen trees on-site. The removal of four specimen trees was approved with this application.

The TCP1 requires a minor technical revision, which is included in the conditions of this approval.

Specimen Trees

Section 25-122(b)(1)(G) requires that “Specimen trees, champion trees, and trees that are part of a historic site or are associated with a historic structure shall be preserved and the design shall either preserve the critical root zone of each tree in its entirety or preserve an appropriate percentage of the critical root zone in keeping with the tree’s condition and the species’ ability to survive construction as provided in the Environmental Technical Manual.”

The site contains eight specimen trees with the ratings of good (ST-1, ST-2, and ST-8), fair (ST-3, ST-4, ST-5, and ST-6), and poor (ST-7). The removal of four specimen trees is approved.

Statement of Justification Request

A Subtitle 25 variance application, an SOJ in support of a variance, and a tree removal plan were received for review on August 23, 2019.

Section 25-119(d)(1) of the WCO contains six required findings to be made before a variance can be granted. The submitted letter of justification seeks to address the required findings for the four specimen trees, and details specific to individual trees have also been provided in the following chart.

SPECIMEN TREE SCHEDULE SUMMARY

	COMMON NAME	Diameter (in inches)	CONDITION	DISPOSITION
1	Tulip poplar	30	Good	To be removed
2	White oak	33	Good	To be removed
3	White oak	35	Fair	To be saved
4	Tulip poplar	37	Fair	To be saved

5	Red oak	30	Fair	To be removed
6	Tulip poplar	30	Fair	To be saved
7	White oak	40	Poor	To be saved
8	American beech	45	Good	To be removed

Statement of Justification Request

A variance to Section 25-122(b)(1)(G) was approved for the clearing of the four specimen trees on-site. The site consists of 72.23 acres and is zoned M-X-T. This variance is requested to the Woodland and Wildlife Conservation Habitat Ordinance, which requires, under Section 25-122 of the Prince George’s County Zoning Ordinance, that “woodland conservation shall be designed as stated in this Division unless a variance is approved by the approving authority for the associated case.” The applicant submitted an SOJ of how the required findings for approval of a variance are being met.

The text in **BOLD**, labeled A-F, are the six criteria listed in Section 25-119(d)(1). The plain text provides responses to the criteria.

(A) Special conditions peculiar to the property have caused the unwarranted hardship;

The site is primarily wooded with extensive PMA throughout the central portion of the site. Also, a master plan roadway along the western property line connecting Brandywine Road and Branch Avenue is required with this development. The location of the four specimen trees and their root zones will be impacted due to their location relative to the master plan roadway, sewer line access, and necessary road and lot grading to avoid PMA impacts. To effectively develop the site with the necessary right-of-way and infrastructure improvements and the grading, the subject specimen trees must be removed.

(B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

The central area of the property cannot be developed due to various environmental constraints. These areas are primarily forested. Four specimen trees and their root zones will be impacted, due to their location relative to the master plan roadway (ST-8), a sewer line access (ST-5) and necessary road and lot grading to avoid PMA impacts (ST-1 and ST-2). Four specimen trees located on the property are to be retained. The development of the site is in keeping with similar projects within the area.

(C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;

Based on the various site constraints (PMA) and the master-planned roadway, the granting of this variance will allow the project to be developed in a functional and efficient manner.

(D) The request is not based on conditions or circumstances which are the result of actions by the applicant.

The removal of the specimen trees is primarily due to the proximity of the adjacent PMA, and the need to prevent impacts to the PMA and the required construction of the master-planned roadway. The request is not the result of actions by the applicant.

(E) The request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

This request is based on the nature of the existing site, the distribution of the subject trees, and the required on-site infrastructure. This request is not based on conditions related to land or building use on a neighboring property.

(F) Granting of the variance will not adversely affect water quality

The removal of four specimen trees will not adversely affect water quality. The Branch Avenue M-X-T development will not adversely affect water quality because the project will be subject to the requirements of the Maryland Department of the Environment, the Prince George's County Soil Conservation District, and the approval of a SWM concept plan by DPIE. The applicant is proposing to meet more than the woodland conservation threshold on-site while preserving much of the PMA. The remainder of the woodland conservation requirement will be met with off-site woodland credits.

The required findings of Section 25-119(d) have been adequately addressed by the applicant for the removal of Specimen Trees 1, 2, 5, and 8, and the Planning Board approves the variance.

Preservation of Regulated Environmental Features/Primary Management Area

Impacts to the regulated environmental features shall be limited to those that are necessary for development of the property. Necessary impacts are those that are directly attributable to infrastructure required for the reasonable use, and orderly and efficient development of the subject property, or are those that are required by County Code for reasons of health, safety, or welfare. Necessary impacts include, but are not limited to, adequate sanitary sewerage lines and water lines, road crossings for required street connections, and outfalls for SWM facilities. Road crossings of streams and/or wetlands may be appropriate if placed at the location of an existing crossing or at the point of least impact to the regulated environmental features. SWM outfalls may also be considered necessary impacts if the site has been designed to place the outfall at a point of least impact. The types of impacts that can be avoided include those for site grading, building placement, parking, SWM facilities (not including outfalls), and road crossings where reasonable alternatives exist. The cumulative impacts for the development of a property shall be the fewest necessary and sufficient to reasonably develop the site, in conformance with the County Code.

The site contains regulated environmental features. According to the TCP1, impacts to the PMA

are for one road crossing (Area A), multiple sewer crossings and connections (Area B), and one SWM outfall (Area C). An SOJ was received with the revised application dated August 8, 2019, for the impacts to the PMA (floodplain, stream, stream buffer, and steep slopes).

Statement of Justification

The SOJ includes a request for three separate PMA impacts totaling 62,000 square feet (1.42 acres) of impacts to floodplain, stream, stream buffer, and steep slopes.

Analysis of Impacts

Based on the SOJ, the applicant is requesting a total of three impacts listed, then described below:

Impact A: Road Construction

PMA impacts total 26,358 square feet for the construction of a single road crossing connecting two developable areas. The impact area is shown at a narrow location within the stream bed. The impacts are to an intermittent stream channel (168 linear feet) and its associated stream buffer.

This impact is unavoidable and is necessary for development of the site. Impact A is approved.

Impact B: Sewer Line Installation

PMA impacts totaling 32,380 square feet for the construction of various sections of sanitary sewer lines and connecting to an existing manhole. These sewer lines are located within the perennial stream valley, between the residential area and the commercial area, to connect to the existing off-site manhole. The impacts are to a perennial stream channel (56 linear feet), stream buffer, 100-year floodplain, and steep slopes.

This impact is unavoidable and is necessary for the development of the site. Impact B is approved.

Impact C: Stormwater Management Outfall

PMA impacts total 3,262 square feet for the construction of one SWM outfall structure and an adjacent sewer line. The impacts are to the 100-year floodplain and steep slopes.

This impact is unavoidable and is necessary for the development of the site. Impact C is approved.

Based on the level of design information currently available, the limits of disturbance shown on the TCP1 and the impact exhibits provided, the regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible. The impacts necessary for road construction, sewer line installation, and one SWM outfall (Impacts A, B, and C) are reasonable for the orderly and efficient development of the subject property.

Soils

The predominant soils found to occur according to the United States Department of Agriculture, Natural Resources Conservation Service, Web Soil Survey are the Beltsville silt loam (0 to 5 percent), the Croom-Marr complexes, Sassafras complexes, Udorthents soils, and

Widewater and Issue soils. Marlboro clay and Christiana complexes are not found on or near this property.

Lot Depth Variation—Because the property fronts on an arterial road (A-65), pursuant to Section 24-121(a)(4), the applicant has provided a variation request to allow lots to be platted with less than the required minimum 150-foot lot depth. Section 24-121(a)(4) states the following:

Section 24-121. Planning and design requirements.

- (a) **The Planning Board shall require that proposed subdivisions conform to the following:**
 - (4) **Residential lots adjacent to existing or planned roadways of arterial classification shall be platted with a minimum depth of one hundred and fifty (150) feet. Residential lots adjacent to an existing or planned roadway of freeway or higher classification, or an existing or planned transit right-of-way, shall be platted with a depth of three hundred (300) feet. Adequate protection and screening from traffic nuisances shall be provided by earthen berms, plant materials, fencing, and/or the establishment of a building restriction line, when appropriate.**

Section 24-113 sets forth the required findings for approval of a variation request:

Section 24-113 Variations

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle and Section 9-206 of the Environment Article; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**
 - (1) **The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;**

The 150-foot lot depth requirement is aimed at providing a deep enough lot so that undue impacts related to traffic, in this case from A-65, a master plan arterial roadway, which is planned to cross the subject property, are avoided.

Using the Noise Computation Formula Worksheet provided by M-NCPPC and the future projected average daily traffic for A-65, the future 65 dBA noise

contour was determined to be 78 feet from the centerline of A-65, which places the contour within homeowners association (HOA) space for a majority of the site's frontage on A-65. Those lots that front on A-65 and the building construction will help mitigate the noise, which does not fall within the rear yards of any units. The development is designed such that outdoor activity areas provided for the residents are located out of the areas which would be impacted by noise generated from the roadway at ultimate build out. In addition, the dwelling units will be designed to ensure that noise interior to the dwelling, which would be generated from an arterial roadway, is reduced below 45 dBA, based upon projected noise levels. With these design and construction protections in place, the granting of the variation will have no future negative impacts, should the roadway be constructed to arterial standards in the future.

Light trespass from vehicles driving on A-65 will not be an issue since traffic will be travelling parallel to the fronts of most units adjacent to the roadway. For the few that are located perpendicular to A-65, the street trees that will be installed along A-65, as well as the landscape planting that is done on the HOA parcels, will mitigate any potential lighting conflicts. A landscape plan will be provided with the DSP application for the project, which will reflect this mitigation.

Special attention will be paid to the use of salt tolerant plant species for both the street trees as well as the bio-retention plantings for the facilities that will be providing SWM for the roadways. The project's street tree and lighting plans, as well as the SWM landscape plans, will not propose White Pines, Sugar Maples, Dogwoods, or Lindens due to their sensitivity to salt spray. Instead, the landscape plans will feature White Oak, Arrow-wood, Summersweet, Winterberry, and Northern Bayberry, which all thrive in a higher saline environment.

Building materials shall also be reviewed at the time of DSP to ensure durability against particulate matter from the roadway, given the placement of structures along A-65.

There is no evidence that such variations are injurious to other properties. The granting of the variation will not have negative impacts on public health, safety, or welfare.

(2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;

Though the site has frontage on Branch Avenue, it is accessed primarily from Brandywine Road. As planned, A-65 will connect Piscataway Road (far to the west) across Brandywine Road to Shady Oak Parkway via a proposed overpass over Branch Avenue to the east. The timing of this construction and ultimate

connection to points east and west is still undetermined. However, the A-65 impact on the subject property is significant, as A-65 cuts through the heart of the subject property creating design and engineering difficulties. The right-of-way location, moved slightly north of the master plan alignment, decreases some of the difficulties, but creates a difficulty in meeting the 150-foot lot depth requirement. The right-of-way for A-65 is secured west of Brandywine Road, but much of the right-of-way for its connection across Branch Avenue is yet to be acquired. The A-65 right-of-way through the site is more than 2,000 feet long, covering nearly the entire length of the property. These conditions create an environment that is unique to the property and generally not applicable to other properties.

- (3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and**

The variation from Section 24-121(a)(3) is unique to the Subdivision Regulations and under the sole authority of the Planning Board. Therefore, the variation does not constitute a violation of any other applicable law, ordinance, or regulation.

- (4) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;**

The property is irregularly shaped, with a narrow frontage on Brandywine Road, and narrow frontage on Branch Avenue. In the northern portion of the property, there is a 2,000-foot-long future master plan arterial roadway (A-65), and in the property's center, an unnamed tributary to Piscataway Creek. The property widens in the center before narrowing again as it nears Branch Avenue; it eventually comes to a point across Branch Avenue. The combination of the unnamed Piscataway Creek tributary and the planned A-65 right-of-way limit the development potential of the property. If the strict letter of these regulations is carried out, it would again impose another limitation to this development and hardship to the applicant.

- (5) In the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where multifamily dwellings are proposed, the Planning Board may approve a variation if the applicant proposes and demonstrates that, in addition to the criteria in Section 24-113(a), above, the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George's County Code.**

This is not applicable because the site is zoned M-X-T.

The Planning Board finds that the conditions on which the variation is based are unique to the property and the variation request is supported by the required findings. The Planning Board also finds that approval of the applicant's request will not have the effect of nullifying the intent and purpose of the Subdivision Regulations, which is to guide development according to Plan 2035.

Therefore, the Planning Board approved the variation from Section 24-121(a)(4), to allow 84 lots to be platted with a lot depth less than 150 feet.

17. **Urban Design**—Conformance with the following Zoning Ordinance regulations is required for the site development at the time of the required DSP review:

- Section 27-544 regarding regulations in the M-X-T Zone;
- Section 27-547(b) regarding the Table of Uses for the M-X-T Zone;
- Section 27-548 regarding regulations in the M-X-T Zone, as amended by CB-087-2018;
- Part 11, Off-street Parking and Loading; and,
- Part 12, Signs

Section 27-548(g) reads, as follows:

Each lot shall have frontage on, and direct vehicular access to, a public street, except lots for which private streets or other access rights-of-way have been authorized pursuant to Subtitle 24 of this Code.

Private streets are approved with this application and are consistent with the requirements of Subtitle 24.

The lot layout generally conforms with the Zoning Ordinance requirements applicable to the M-X-T Zone. However, the PPS is not consistent with the requirements of Section 27-548(h), regarding minimum lot width and maximum number of units in each building group. Specifically, the applicable provisions of Section 27-548(h) are as follows:

- (h) **Townhouses developed pursuant to a Detailed Site Plan for which an application is filed after December 30, 1996, shall be on lots at least one thousand two hundred (1,200) square feet in size, and shall have at least sixty percent (60%) of the full front facades constructed of brick, stone, or stucco. In addition, there shall be no more than eight (8) townhouses per building group, except where the applicant demonstrates to the satisfaction of the Planning Board or District Council, as applicable, that more than eight (8) dwelling units (but not more than ten (10) dwelling units) would create a more attractive living environment or would be more environmentally sensitive. In no event shall the number of building groups**

containing more than eight (8) dwelling units exceed twenty percent (20%) of the total number of building groups in the total development. The minimum building width in any continuous, attached group shall be eighteen (18) feet, and the minimum gross living space shall be one thousand two hundred and fifty (1,250) square feet. For the purposes of this Subsection, gross living space shall be defined as all interior building space except the garage and unfinished basement or attic area.

There are 45 lots in the interior of the development, which are 16 feet in width. The applicant requests a variance to the minimum lot width requirements of Section 27-548(h), to allow 45 interior lots to be 16 feet in width.

Pursuant to CB-87-2018, Section 27-548(h) was revised, as follows:

Townhouses developed pursuant to a Detailed Site Plan for which an application is filed after December 30, 1996, shall be on lots at least ~~one thousand eight hundred (1,800)~~ one thousand two hundred (1,200) square feet in size, and shall have at least sixty percent (60%) of the full front facades constructed of brick, stone, or stucco. In addition, there shall be no more than ~~six (6)~~ eight (8) townhouses per building group, except where the applicant demonstrates to the satisfaction of the Planning Board or District Council, as applicable, that more than ~~six (6)~~ eight (8) dwelling units (but not more than ~~eight (8)~~ ten (10) dwelling units) would create a more attractive living environment or would be more environmentally sensitive. In no event shall the number of building groups containing more than ~~six (6)~~ eight (8) dwelling units exceed twenty percent (20%) of the total number of building groups in the total development, ~~[and the end units on such building groups shall be a minimum of twenty-four (24) feet in width].~~ The minimum building width in any continuous, attached group shall be ~~twenty (20)~~ eighteen (18) feet, and the minimum gross living space shall be one thousand two hundred and fifty (1,250) square feet.

In accordance with Section 27-230(a) of the Zoning Ordinance, in order to approve a variance, the Planning Board must make the findings, as follows:

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:**
 - (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

This property is impacted by numerous natural conditions as well as situations or conditions unrelated to the natural environment.

Specifically, a 2,000-foot-long planned master plan arterial roadway (A-65) runs across the northern section of the property, and an unnamed tributary to Piscataway Creek impacts a large part of the property's center. The topography associated with the stream divides the property, resulting in a protected central corridor. The combination of the unnamed Piscataway Creek tributary and the planned A-65 right-of-way limit the development potential of the property. In addition, the subject property is impacted by an archeological site, as well as a family cemetery.

(2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and

The regulations applicable to townhouse development were inserted into the Zoning Ordinance in 1996. As originally enacted, these regulations established a minimum width of 20 feet for townhouses. However, over the years, it was recognized that such a limitation was not appropriate under all circumstances. Revisions were made to allow for denser development in and around transit stations (CB-40-2002) and in Mixed Use Planned Communities (CB-13-2002). Other unique circumstances were addressed through the approval of variances. In 2018, the County Council modified the regulations applicable to townhouses in recognition that the nature of townhouse development had changed to a more urban product, with an emphasis on rear loaded units that reduce the number of garages facing the street. As a result, CB-87-2018 amended the requirements of Section 27-548(h). According to the Committee Report, the bill was “intended to modernize the outdated standards for townhouses...” The Council amended many of the standards of Section 27-548(h) and recognized at that time that the minimum standard of 20 feet for townhouse widths was "outdated" and reduced that minimum standard to 18 feet. However, unique circumstances such as the subject property are still appropriate to address through the approval of a variance.

This PPS provides a mix of townhouse styles and widths that was approved in the Conceptual Site Plan. Almost 90% of the proposed townhouses are 20 feet wide to 24 feet wide. The builders have requested the ability to provide a variety of unit widths to provide product diversity and a range of prices to meet the needs of a broader range of purchasers. The 45 16-foot wide townhouses are provided mostly near the center of the project. These units occur in the middle of a building group and provide architectural variety to the community.

The second criterion for approval of a variance is that the strict application of the Zoning Ordinance will result in peculiar and unusual

practical difficulties, or exceptional or undue hardship upon the owner of the property. The type of variance requested in this case is an area variance, which is subject to the “practical difficulty” standard. Maryland courts have stated that in order to justify the grant of an area variance, the applicant need show only that:

1. Compliance with the strict letter of the restrictions governing areas, setback, front ages, height, bulk density would unreasonably prevent the owner from using the property for a permitted use or would render conforming with such restrictions unnecessarily burdensome;
2. A grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved would be more consistent with justice to other property owners; and
3. Relief can be granted in such fashion that the spirit of the Ordinance will be observed, and public safety and welfare secured.

The standard width of townhouses in Prince George's County for many years has been 20 feet, as dictated by the minimum lot width established in 1996. The County Council clearly recognized the need for additional diversity of width by reducing the minimum size to 18 feet. However, providing 18-foot-wide townhouses is problematic in this case, given the lack of market for them and the lack of builder product. The provision of 16-foot townhouses will increase architectural variety within the community, and accommodate a larger demographic of buyers. The reduction in unit width size will not result in a reduction in the minimum lot size provided. Thus, the variance requested is minor, and the 18-foot requirement is unnecessarily burdensome.

The M-X-T Zone calls for flexibility in design that, in part, responds to market forces and allows for “freedom of architectural design to provide an opportunity and incentive for the developer to achieve excellent in physical, social and economic planning.” [Sec. 27-542(a)]. Without the flexibility to provide a small number of 16-foot townhouses, the applicant is hampered from providing options for potential buyers of various economic means. Substantial justice is accomplished with the approval of the variance.

Granting of the variance to allow 16-foot-wide townhouses, as shown on

the approved CSP, will have no impact on public safety, and will in fact, have a positive impact on public welfare. Public welfare is served by great neighborhoods, which are created with variety and interest and context sensitive design.

(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

The Subregion 5 Master Plan recommends Residential Low Density (Map IV-1; p. 32), and the SMA rezoned the property from the R-R Zone to the M-X-T Zone (Change 19; p. 188). While the Subregion 5 Master Plan recommended low density, the County Council placed the property in the M-X-T Zone. Mixed use areas are described as “areas [that] contain residential, commercial, employment and institutional uses” (p.33). The mix of uses proposed on the property; residential, commercial office, and institutional uses are in keeping with CSP-17003.

Plan 2035 recommends major developments be concentrated within Centers. The property is in the Established Communities Growth Policy Area established in Plan 2035:

Plan 2035 classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers, as Established Communities. Established Communities are most appropriate for context-sensitive infill and low- to medium-density development. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries, schools, parks, and open space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met.” (p. 20)

Not all properties in the Established Community Policy Area can be considered "infill" development. The key is that the development be context sensitive, low- to medium-density development. The PPS presents development in keeping with the Subregion 5 Master Plan recommendations in an area where public facilities are available to meet the needs of the residents.

With 407 proposed mixed-type dwelling units on 74 acres, the proposed density is 5.5± dwellings per acre, within the range the R-55 Zone.

Both the Master Plan and Plan 2035 are silent on specifics such as lot size. Both call for low or moderate density on the site; the 16-foot-wide

townhouses do not affect that recommendation. Three of the purposes of the M-X-T Zone [Section 252(a)] are:

- (2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;
- (9) To permit a flexible response to the market and promote economic vitality and investment; and
- (10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

The variance is approved to provide a compact, mixed-use community that is flexible in its response to changing market conditions and achieve excellence in physical, social and economic planning. The proposed development advances the purposes of the M-X-T Zone and does not impair the integrity of the Master Plan or Plan 2035. A range of townhouse widths provides a variety and visual interest in the neighborhood.

In addition, one of the building groups contains nine units. Providing nine units in a building group does not require a variance, but rather requires a justification, which the applicant provided in an SOJ in support of the PPS. One building group with nine units is well within the 20 percent allowed and is approved. According to the SOJ, the nine-unit stick will reduce the infrastructure and environmental impacts for roads, utilities, and SWM facilities.

Tree Canopy Coverage Ordinance

Subtitle 25, Division 3, of the Tree Canopy Coverage Ordinance requires a minimum percentage of the site to be covered by tree canopy for any development project that proposes more than 5,000 square feet of gross floor area or disturbance, and requires a grading permit. Properties zoned M-X-T are required to provide a minimum of 10 percent of the gross tract area to be covered by tree canopy. The subject site is 72.23 acres in size and requires 7.22 acres of tree canopy coverage. Compliance with this requirement will be further evaluated at the time of DSP review.

2010 Prince George's County Landscape Manual

The development is subject to the requirements of the *2010 Prince George's County Landscape Manual*. Specifically, the applicant must demonstrate conformance with Section 4.1, Residential Requirements; Section 4.2, Requirements from Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.6, Buffering Development from Streets, Section 4.7, Buffering Incompatible Uses, Section 4.9, Sustainable Landscaping Requirements, and Section 4.10, Street Trees along Private Streets, at

the time of DSP review.

Other Design Issues

The submitted PPS shows areas for private on-site recreational facilities in fulfillment of the mandatory dedication requirement. Conformance with the *Park and Recreation Facilities Guidelines* will be determined at the time of DSP when details of specific facilities are provided.

At the time of DSP, if it is determined that additional facilities are required to meet the value amount, there may be a loss of lots due to the limited usable open spaces in the PPS.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with Circuit Court for Prince George's County, Maryland within thirty (30) days following the date of notice of the adoption of this Resolution.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Doerner, and Hewlett voting in favor of the motion, and with Commissioner Bailey absent at its regular meeting held on Thursday, October 3, 2019, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 24th day of October 2019.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:AT:gh