



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

Staff Report: Limited Site Plan Amendment 82005028C, Reserve at Fair Hill

ITEM #: _____

MCPB HEARING DATE: December 16, 2010

REPORT DATE: December 6, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
 Robert Kronenberg, Supervisor
 Development Review Division

FROM: Molline Smith, Senior Planner
 Development Review Division
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 Molline.Smith@montgomeryplanning.org



APPLICATION DESCRIPTION: The property is zoned RNC and located along Wickham Road to the southwest of Olney-Laytonsville Road (MD 108). This amendment proposes to 1) revise Conditions 10d, 10g and 10h; and 2) amend the Impervious Surface Compliance Agreement.

APPLICANT: Pulte Homes

FILING DATE: October 6, 2010

RECOMMENDATION: Approval with revised conditions

EXECUTIVE SUMMARY: The Reserve at Fair Hill is a 334 acre property located in the Upper Rock Creek Special Protection area, which has an 8% impervious cap. However, through the site plan process the applicant agreed to a more restrictive 7.03% impervious surface limitation for the entire project. In order to ensure compliance with this limitation, the Forest Conservation and Environmental Conditions of the approval call for the withholding of 13 building permits to allow for the monitoring of construction to confirm the on-lot impervious surface area calculations. Per these requirements, the Applicant has submitted impervious surface reports for 86 lots to date (approximately 65% of the total

Approval signatures

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number of approved lots). These reports indicate that the impervious surfaces are actually 80% or less than their projected totals; therefore the Applicant anticipates that the entire project will easily meet the impervious surface limitations. Therefore, the Applicant has requested modifications in the timing of building permit release specified in *Conditions 10d, 10g & 10h* so that a steady rate of construction can be maintained on-site.

SITE DESCRIPTION

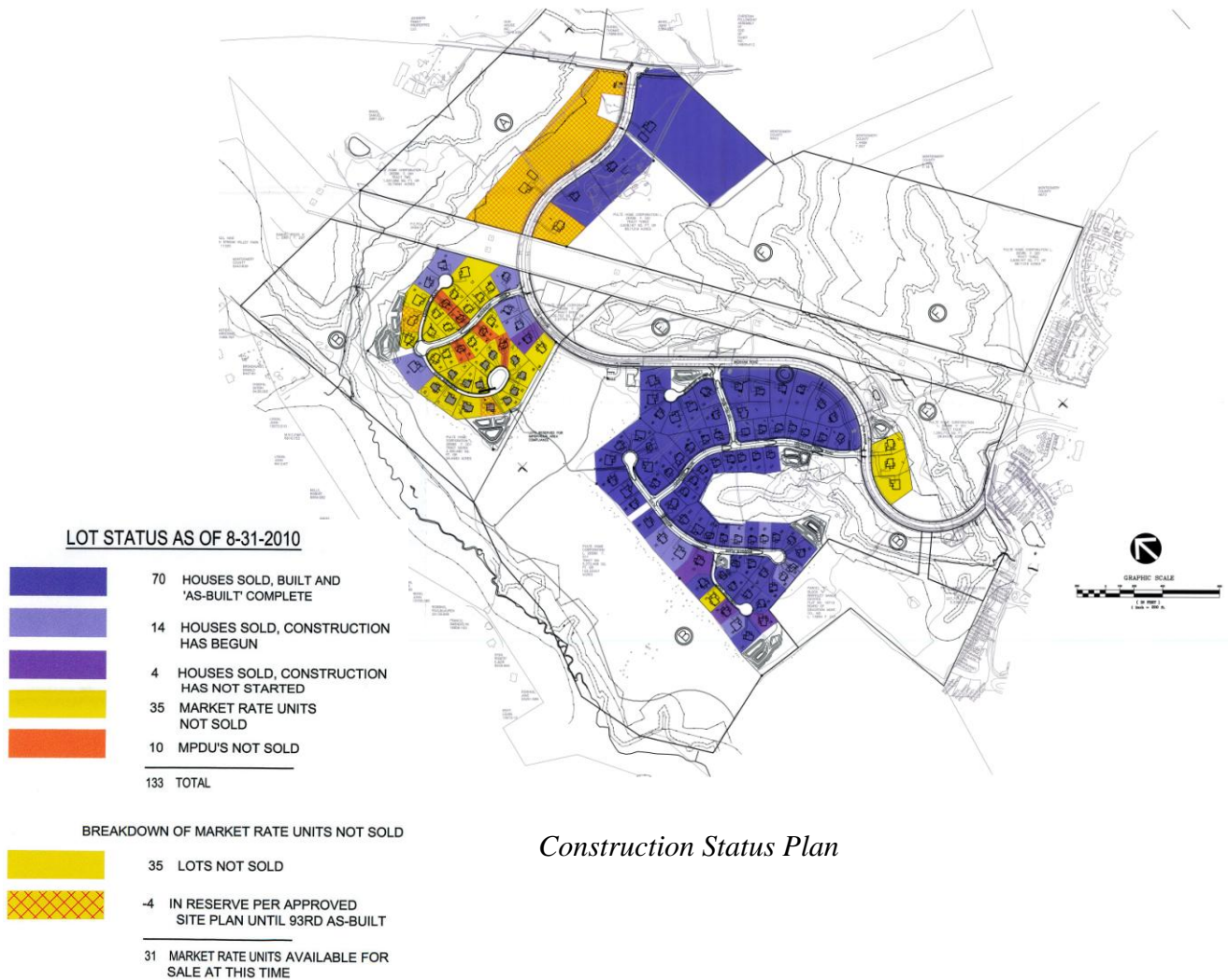
Site Vicinity & Analysis

The 334-acre property is zoned RNC (Rural Neighborhood Cluster). In February 2006, the residential subdivision was approved for 133 total dwellings units to be located along Wickham Road; which intersects Olney-Laytonsville Road (MD 108). The site is currently under construction with 70 one-family units including 10 MPDUs (Moderately Priced Dwelling Units) fully constructed and sold, 14 one-family units under construction, and 13 lots under contract.



Aerial Photo

The subject site is located along the headwaters of the North Branch Stream within the Upper Rock Creek watershed straddling the stream valley and wetlands, and is classified as a Special Protection Area (SPA). In accordance to the approval of the original Final Water Quality Plan, the build out of the residential development will occur within a 91-acre envelope (approximately 27% of the total area of the site) while 243 acres (approximately 72.7% of the total area of the site) will be preserved as open space areas, which include forested and non-forested environmental buffers.



As of October 2010, approximately 57% of the entire project has been fully constructed; which includes preservation areas, SWM facilities, site amenities, vehicular and pedestrian connections, and residential lots. The target completion date is summer of 2011.

PROJECT DESCRIPTION

Previous Approvals

The Preliminary Plan 120041100 was approved on March 31, 2005 for 133 dwelling units, including 20 MPDUs with an impervious surface limitation of 8% for the entire site. A waiver to allow sidewalks on one side of the street only and another to allow a reduced center line radii on two of the streets was also granted.

The Site Plan 820050280 was approved on February 2, 2006 for 133 dwelling units (113 market rate and 20 MPDUs) under the optional method of development on 334-acres of land zoned RNC. A more restrictive impervious surface limitation of 6.88% was established for the entire site.

Consent Amendment A, which was approved on September 21, 2006, increased the impervious surface limitation from 6.88% to 7.03% in order to address comments from the Fire Marshall and the Department of Permitting Services (DPS) regarding the standard widths for private roads and termini for emergency vehicles and the stormwater management facilities. As a result, the impervious surface area increased from 22.97 acres to 23.48 acres.

Administrative Amendment B was approved February 26, 2009 for modifications to the lighting poles, landscape, site grading and general notes.

Proposal

The Applicant is requesting to 1) revise the conditions of approval; and 2) amend the Impervious Surface Compliance Agreement (*see Appendix D*). The following revisions to the Forest Conservation and Environmental *Conditions No. 10d, 10g and 10h* are specifically related to the sequencing of the development program with regard to when and how the building permits may be released.

The approved *Condition 10d* states:

Applicant to enter into an agreement with M-NCPPC for the purpose of withholding of building permits for thirteen (13) residential lots to ensure compliance with the impervious limitations and monitoring compliance with the impervious limitations of the site plan. The 13 lots shall be graphically denoted on the site plan. A note shall be placed on the record plat restricting issuance of building permits for lots 20 through 27 Block "B" and lots 30 through 34 Block "B" pending approval from M-NCPPC Environmental Planning.

The revisions proposed for *Condition 10d* will amend the Impervious Surface Compliance Agreement, dated December 11, 2006, to allow the early release of 9 out of the 13 withheld building permits. The site plan and condition specifically identify the remaining 4 lots to be withheld.

The approved *Condition 10g* states:

The developer/builder must submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of the 66th, 100th and 119th building permits. The applicant must submit an impervious report for each of the remaining building permits after the 119th building permit. The impervious reports must include: surveyed 'as-builts' drawings which include dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground.

The revisions proposed for *Condition 10g* will update the issuance of building permits relevant to the current status of review for the impervious surfaces reports. The Applicant has surpassed the issuance of the 66th and the 100th building permits (per the original condition), and submitted impervious surface reports for 86 of the residential lots (approximately 65% of the total number of lots). Environmental Planning Staff has reviewed and approved these reports, and as of November, 103 building permits have been released. The Applicant agrees to submit impervious surface reports (including surveyed "as-built" drawings, wall check plans and building permit plans) for the remaining lots on a monthly basis.

The approved *Condition 10h* states:

If the 'as-builts' submitted for 93 units (70% of the total number of units) demonstrate that construction of the units to date is less than or equal to 97% of the total on-lot impervious limitations for the first 93 'as-builts', then M-NCPPC staff will release building permits for 9 of the 13 withheld lots. Building permits for the remaining 4 withheld lots will be released by M-NCPPC staff as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.

If at the 93 'as-built' drawing construction to date is greater than 97% of the total on-lot impervious limitations, then staff will release building permits for the 13 withheld lots as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.

The revisions proposed for *Condition 10h* delineate the terms of agreement between MNCPPC and the Applicant for the release of the remaining 4 building permits; assuming the on-lot impervious surface limitations are in full compliance with the original requirements.

Based upon the current reporting and projected totals for the entire project, Staff and the Applicant believe they will be approximately 28% below the on-lot impervious surface area limitation.

PROJECT ANALYSIS

Environment

The originally approved site plan set the impervious limitation at 22.97 acres (6.88% of the gross tract area). The Consent Amendment A increased the impervious surface area to 23.48 acres (7.03% of the total property) based on comments from Fire and Rescue and DPS. The total on-lot allowance of impervious surface area was established at 17.79 acres. The Forest Conservation and Environmental *Conditions No. 10d, 10g and 10h* were specifically adopted by the Planning Board to ensure that the project does not exceed the impervious limitations for the site.

As of November 30, 2010 the impervious area projection chart submitted by the Applicant shows that the imperviousness for the first 86 residential lots is 46%; which is 19% below the limitation if the impervious surface areas have been equally split amongst the lots. The Applicant projects that at the time of release for the remaining 4 building permits the project will be approximately 75% fully constructed; which is projected to be between 52% and 55% of the allowed on-lot impervious limitation. Furthermore at the time of final build out for all of the 133 units the on-lot impervious surface area is projected to be 72% of the allowed 17.79 acres (approximately 12.80 acres). In accordance to the revised *Condition No. 10h¹*; the last 33 units will make up approximately 20% of the approved on-lot imperviousness.

Environmental Planning staff believes that the revised conditions retain the original intent and goals of the original conditions. The original approval was intended to be met by the developer of the property; any improvements/ enhancements made by the homeowners were not originally included within the total 22.97 acres of imperviousness.

COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and submission meeting requirements. Notice of the subject amendment was sent to all parties of record on September 30, 2010.

RECOMMENDATION AND CONDITIONS

The proposed modifications to the site plan do not alter the overall design character of the development in relation to the original approval and the site remains compatible with existing and proposed development adjacent to the site. These modifications do not impact the efficiency, adequacy, or safety of the site with respect to vehicular and pedestrian circulation, open space, landscaping, or lighting.

¹ Revised Condition 10h: If the submitted Impervious Surface and M-NCPPC reviewed reports for the first 100 units show that construction of the units is greater than 80% of the total on-lot impervious area shown for the 100 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then staff will release building permits for the withheld lots as staff determines compliance with the on-lot impervious limitations...

Staff recommends approval of site plan 82005028C, Reserve at Fair Hill, for the amendments delineated above. All site development elements shown on the site and landscape plans stamped “Received” by the M-NCPPC on October 6, 2010 are required except as modified by the following conditions.

Conformance with Previous Approvals

1. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 82005028B as listed in the Administrative Approval Memorandum dated February 26, 2009, except for the revisions to *Conditions 10d, 10g, and 10h* as amended by this application and set forth below.

Forest Conservation and Environmental Conditions

Revised Condition 10d: Applicant to amend the Impervious Surface Compliance Agreement, dated December 11, 2006, with M-NCPPC for the purpose of withholding of building permits for four (4) residential lots identified as Lot 1, Block A, Lot 4, Block F and Lots 17 and 23, Block B (“the Withheld Lots”) to ensure compliance with the impervious limitations and monitoring compliance with the impervious limitations of the site plan. The 4 Withheld Lots shall be graphically denoted on the site plan.

Revised Condition 10g: The applicant must submit to M-NCPPC Staff Impervious Surface Reports on a monthly basis. The Impervious Surface Reports must include: surveyed “as-builts” drawings and/or wall check plans, which show dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, walled exits, rear exits and any building feature that is two feet or less from the ground.

Revised Conditions 10h: If the submitted Impervious Surface and M-NCPPC reviewed reports for the first 100 units demonstrate that construction of the units is less than or equal to 80% of the total on-lot impervious area shown for the first 100 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then M-NCPPC staff will release building permits for the Withheld Lots.

If the submitted Impervious Surface and M-NCPPC reviewed reports for the first 100 units show that construction of the units is greater than 80% of the total on-lot impervious area shown for the 100 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then staff will release building permits for the Withheld Lots as staff determines compliance with the on-lot impervious limitations.

APPENDIX

- A. Approved Resolution
- B. Environmental Planning Staff Memo
- C. Statement of Justification
- D. DRAFT Revised Conditions of Approval & Amended Impervious Surface Compliance Agreement

APPENDIX A (Approved Resolution)

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: FEB - 2 2006

Hearing Date: July 14, 2005

Action: Approved Staff
Recommendation

Motion of Commissioner Perdue,
seconded by Commissioner Bryant,
with a vote of 5-0;
Chairman Berlage and Commissioners
Perdue, Bryant, Wellington, and
Robinson voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Site Plan No. 8-05028

NAME OF PLAN: The Reserve at Fair Hill

The date of this written opinion is FEB - 2 2006 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules, thirty days from the date of this written opinion. This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On July 14, 2005, the Montgomery County Planning Board held a public hearing on Final Water Quality Plan and Site Plan Review No. 8-05028. Pulte Homes ("Applicant") proposed to develop 113 one-family detached dwelling units and 20 MPDU duplex semi-detached dwelling units on 334 acres in the RNC zone. At the public hearing, the Planning Board heard testimony and received evidence submitted in the record on the Final Water Quality Plan and Site Plan.

THE SUBJECT PROPERTY

The 334-acre property is located southeast of the intersection Olney-Laytonsville Road (MD Route 108) and Mount Zion Road in the Olney areas. Wickham Road bisects the property into eastern and western tracts. The property is zone RNC and is located in the environmental overlay zone of the Upper Rock Creek Special Protection Area ("SPA"). The Subject Property, formerly known as The Freeman Property, comprises approximately 334 acres in size. The parcel is located along the headwaters of the North Branch Stream straddling the stream valley and wetlands, oriented on the north-south axis in the area between Muncaster Mill Road and Laytonsville Road. The site extends to Laytonsville Road (MD108), south of its intersection with Zion Road. Norbeck Grove is located directly south of the property, as a TDR receiving area. M-NCPPC parkland adjoins for the east and west boundaries of the site. The Applicant proposes to develop the site with single-family detached units, MPDU duplexes, and associated infrastructure.

This Subject Property lies within the Upper Rock Creek watershed (Use III-P in this section) and has been classified as a Special Protection Area. The existing conditions on the site include stream valleys and associated floodplains, wetlands converted into lowland pastures, upland agricultural fields and forest. The tract includes 151.4 acres of forest. The forest is scattered throughout the property with large tracts of upland forest. Not all environmental buffers are forested. The site includes 107 acres of environmental buffer, which includes 52 acres of wetlands.

BACKGROUND

Prior Approvals

The Planning Board reviewed the Preliminary Plan 1-04110 on March 31, 2005. The approval included the granting of the following provisions:

- 1) Waiver for an overlength cul-de-sac and a waiver per §50-26(h)(3) to permit sidewalk on only one side of proposed public tertiary roads and private streets.
- 2) Waiver of §50-26(f) pursuant to §50-38(a) to permit reduced centerline radii on private streets "HH" and "BB".

PROPOSED DEVELOPMENT

This application proposes to create a residential community with 133 dwelling units. The units will be a combination of 113 one-family detached dwelling units and 20 one-family duplex units. The detached dwellings will be located on lots ranging in size from 15,000 square feet to more than 10 acres, with the majority of lots in the 15,000-19,000 square foot range. The duplex units will be located on lots as small as 4,900 square feet.

The plan proposes a total of approximately 242.86 acres, or 72.7 percent of the site, be preserved as open space. Approximately 191 acres of the open space, or 57 percent of the site, will be dedicated to M-NCPPC for parkland. The remaining open space areas will be preserved by conservation and rural open space easements. A combination of public and private modified tertiary open section residential streets, with sidewalks on one side, are proposed with up to eight lots having direct access to existing Wickham Road. Safe and adequate access for vehicles and pedestrians will be provided by the existing and proposed vehicular and sidewalk system.

PLANNING BOARD HEARING

Staff described the location and proposed development. Staff reviewed the waivers granted by the Planning Board at the time it approved the Preliminary Plan for the Subject Property. Staff stated that the Applicant confirmed that the MPDUs shall be developed at a steady rate along with the market-rate units and that it will provide 15% MPDUs. Staff made one correction to Condition No. 7(a) by adding the word "private" before the words "rural open space." Staff recommended approval of the Site Plan with conditions.

The Applicant was represented by legal counsel and accepted all of the Staff's conditions as modified.

There was one speaker. Wayne Goldstein, President of Montgomery Preservation, Inc., testified that he supported the preservation of the Chichester House site as proposed by the Applicant.

The Planning Board questioned Staff regarding the format and content of the Staff's report and, as a result, directed Staff to make several changes to Staff's Project Data Table as incorporated below.

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof based upon the uncontested evidence of record, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with the approved development plan or a project plan for the optional method of development, if required.*

Not applicable.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The Planning Board finds that the Site Plan complies with the purpose clause and all development standards of the optional method of development for the RNC zone. The Planning Board expressly finds that the proposed development achieves a diversity of lot sizes with lots ranging from 4,979 square feet to approximately 10 acres and that the provision of duplex units provides a diversity of house sizes. The Board further finds that the diversity of lot and house sizes is compatible with existing development on adjoining properties and consistent with the purpose and intent of the zone. The Board hereby approves the development standards as set forth in the following Project Data Table:

PROJECT DATA TABLE

	<u>Zoning Ordinance Development Standard</u>	<u>Development Standard approved by the Planning Board and binding on the Applicant</u>
Gross Tract Area (acres)	-	333.95
Maximum Number of Lots	133 (Opt. Method)	113 (market rate) <u>20 (MPDUs)</u> 133 units total
Minimum Lot Area for one-family detached (sq. ft.):	4,000 sf	4,979 sf

Minimum Setbacks:

from the street (as defined in § 59-A-2.1)	15 ft	15 ft.
from the side yard	8 ft., if provided	8 ft. (for duplexes, only the end units must provide 8 ft. side yard setback)
rear yard	to be set by Planning Board at site plan	10 ft.

Minimum Lot Width at the existing or Proposed street line (ft.):	25 ft.	25 ft.
Maximum Building Height (ft.):	35 ft.	35 ft.
Maximum Lot Coverage (%):	35%	35%

Rural Open Space (% of Gross Tract Area):	65%	72.6%
Private Rural Open Space (%):		15.4%
Public Rural Open Space (dedicated to M-NCPPC) (%):		57.2%

Common Open Space (% of Gross Tract Area):	-	3.7%
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For Special Protection Area Total Impervious Area (% of Gross Tract Area):	8% max.	6.88%
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3. *The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Location of Buildings and Structures

The location of buildings and structures are adequate, safe, and efficient. This premier site of approximately 334 acres that supports extraordinary natural features of wetlands and forest,

is shaped as an irregular pentagon, sharply bisected by the linear 250-foot wide Pepco Easement that slices the site's area on the NNW-SSE axis. This easement effectively defines the "west side," with its dense, typical cul-de-sacs and the "east side," that features the five, expansive conservancy lots that directly adjoin the protected open space. In contrast to the Pepco line, lies the major public route, Wickham Road, winding in an extended "S-shape" form from north to south across this natural terrain, connecting the existing subdivisions to the south with Laytonsville Road at the site's northern boundary.

The buildings have been organized in two primary subdivision clusters appended to the major public road and five conservancy lots fronting on Wickham Road. The pattern of these typical suburban lots on cul-de-sacs, while creating a "marketable" product, respects the stream buffers and wetlands, fitting lots around the boundaries of sensitive areas, resulting in, surprisingly, compatible building locations, efficient use of the site, and safe physical relationships between the houses themselves and the surrounding amenities.

b. Open Spaces

The location of the open spaces are adequate, safe, and efficient. The open spaces planned include the required Rural Open Space. The open space provided through this optional method development are notable for their quality and quantity.

Over 191 acres of the 334-acre site will be retained as public rural open space and dedicated to M-NCPPC Parks. Further, 51.6 acres will be preserved as private rural open space protected by conservation easements, as well as an additional 12.7 acres as common open space under the control of the Home Owners Association. The designation of rural and common open space is required by the RNC zone.

The Master Plan's general open space recommendation, as applied to this site, is 65% of net site area for retention as rural open space. The plans indicate that 72.6% will be preserved as rural open space and that 3.7% will be created as common open space; therefore meeting the requirements of the Master Plan for this property.

The stormwater management concept consists of on-site water quantity and quality control via a system of surface sand filters and retention basins. The final water quality plan was approved by the Department of Permitting Services on July 5, 2005.

The disposition of these natural assets, particularly in relationship to the proposed housing, the locations of public roads and bike paths, the Chichester House site, and the public school

site, ensures sustained public enjoyment of these amenities, along with public investment and protection of this valuable land. Clearly, this plan fulfills the intent of the Master Plan.

c. Landscaping and Lighting

The landscaping and lighting are adequate, safe, and efficient. Landscaping proposed for the site consists of formal streetscape installed along the open section public and private internal roads. Perimeter planting has been proposed for the stormwater management ponds and play areas. Varied ornamental plantings consisting of ground cover, shrubs and small trees are planned for the cul-de-sac islands. Recent site inspections verify that the Hickory street trees flank both sides of Wickham Road. Lighting proposed consists of decorative light poles topped with Washington Globe acorn-style lights, spaced within the rows of street trees.

Staff, working with DPS and DPWT has investigated the allowances for spacing of street trees as encompassed in the county code. Such study points to modest, feasible alternatives for the streetscape treatment: utilize the maximum allowable spacing for the placement of street trees along the public and private internal streets, and, enhancing the intervening public view sheds by the provision of groups of native species, deciduous, evergreen, and understory along the front lot lines adjoining the streets. Such treatment provides potential for greater compatibility with the open section roads, and the surrounding natural forest and plantings, while enhancing the visual perspectives of the homes themselves.

d. Recreation Facilities

The recreation facilities are adequate, safe, and efficient. The Planning Board finds that recreation demand is satisfied as proposed. Formal recreation facilities proposed consist of a Tot Lot and an Open Play Area II. Both facilities are located along the street frontage on Wickham Road, offering optimal accessibility. A paved surface parking, also located on the Wickham Road frontage, lot within M-NCPPC parkland dedication, is proposed to accommodate 12 vehicles for users of the natural trails and the subdivision's tot lot.

The existing bike path along Wickham Road provides effective and safe connections between the subdivisions surrounding the site and for future residents of Fair Hill. The extensive areas of forest and wetlands within in the stream valley buffer will provide abundant recreational opportunities for the residents of The Reserve. The protection of these areas, both as dedicated parkland and as private rural open space will preserve the character and environmental health of the sensitive environmental network addressed in the Upper Rock Creek Master Plan.

d. Vehicular and Pedestrian Circulation

The vehicular and pedestrian circulation systems are adequate, safe, and efficient. The pedestrian system consists of formal concrete sidewalks along the public and private streets, paved asphalt paths, and natural trails that traverse the natural areas and dedicated parkland. This comprehensive system provides a generous complement of paths that ensure safe, adequate, and effective connections between the expanded natural trail system and the formal, paved pedestrian routes.

A sidewalk is provided for each internal street; paved asphalt pedestrian paths are provided at numerous points in the site for access to recreational amenities. A direct pedestrian connection is provided at the southern end to the Montgomery County School Site, covered by a public access easement. Sidewalks are provided on one side only of the internal private and public streets, per the waiver approved by the Planning Board under the approved preliminary plan. This limitation is proposed to reduce impervious surfaces and protect the surrounding stream valley. The Applicant will provide trails within the rural open space and a portion of the construction of trails within the dedicated parkland.

Vehicular circulation is accommodated by the provision of public and private roads, as approved at preliminary plan. The roads utilize the reduced width tertiary public road with twenty-six feet of paving to minimize impervious coverage in the PMA.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed housing is compatible with the established patterns of the surrounding residential development and with the vision of the Master Plan. The placement and shape of the existing Wickham Road, essentially establishes the density and larger scale development pattern, whose envelope, is dictated in correspondence with the locations of the stream valley buffers. Generally, the houses achieve a pattern and density that is compatible with the surrounding existing and proposed adjacent development.

The Planning Board further finds that the activity associated with the proposed residential community will not cause any negative effect on adjacent residential or institutional uses.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.*

Forest Conservation requirements have been met by the preservation of 37.60 acres of private on-site forest; 191 acres of forested area will be dedicated to M-NCPPC Parks, contiguous with existing parkland. The Applicant is required to reforest 25 acres as mitigation for forest clearing.

A Category I Conservation easement will be placed over the forest conservation and stream valley buffer areas on private property as shown on the Forest Conservation Plan.

With the conditions of approval for the Final Water Quality Plan, the proposed development meets all applicable requirements of Chapter 19 for water resource protection. The project as proposed maintains an on-site imperviousness of 6.88% of the Gross Tract Area, which is below the 8% impervious cap required by the SPA.

6. The Record of this Site Plan does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

PLANNING BOARD ACTIONS AND CONDITIONS

The Montgomery County Planning Board APPROVES the Final Water Quality Plan and Site Plan Review No. 8-05028 for 113 one-family detached dwelling units and 20 MPDU duplex semi-detached dwelling units on approximately 334 acres in the RNC Zone. All site elements of The Reserve at Fair Hill (8-05028) Site Plan(s) dated 6/10/05 and Site Details dated 6/9/05, shall be required except as modified by the following conditions:

1. Conformance with Prior Approvals
 - a. The proposed development shall comply with the conditions of approval for Preliminary Plan 1-04100 as approved by the Planning Board on March 31, 2005.
 - b. The proposed development shall comply with the conditions of approval as stated in the DPS letter dated July 5, 2005, approving the Final Water Quality Plan for elements of the Special Protection Area under its purview
2. Site Design: the following revisions shall be included and/or information provided prior to signature set, subject to staff review and approval:
 - a. Locate all storm water management facilities outside of the PUE-PIE and outside of the forest conservation easement areas;

- b. Provide a land area for maintenance and construction 8-feet in width between each retaining wall and forest conservation easement areas; provide top and bottom elevations for all retaining walls and note the linear feet of the retaining wall segments; construct all retaining walls of masonry materials; limit the height of all retaining walls to 6 feet and create terraces where necessary;
 - c. Provide a public access easement for any trail connections through common HOA open space to parkland and the public school site;
 - d. Provide details and specifications for the pedestrian connection to the public school site.
3. Landscape Design: the following revisions shall be included and/or information provided prior to signature set, subject to staff review and approval:
- a. Revise spacing of street trees to conform to the Montgomery County Department of Public Works and Transportation maximum spacing standard (50-60 feet o.c.);
 - b. Provide alternative foundation planting plan for front lot lines including deciduous, evergreen, and understory planting, for one of the three house lots listed in each line below:
 - i. Fairhill Road: Lots 1, 2, 3;
 - ii. Chichester House Road: Lots 5, 6, 7;
 - iii. Chichester House Road: the Historic site, if acceptable to MNCPPC Historic Preservation and M-NCPPC Parks;
 - iv. Chichester House Road: Lots 108, 109, 110;
 - v. Chichester House Road: Lots 55, 56, 57;
 - vi. Woodgate Place: Lots 60, 61, 62;
 - vii. Woodgate Place: Lots 99, 100, 101;
 - viii. Woodgate Place: Lots 70, 71, 72;
 - ix. Woodgate Place: Lots 91, 92, 93;
 - x. Weatheroak Drive: Lots 3, 4, 5;
 - xi. Ashbourne Place: Lots 8, 18, 19;
 - xii. Ashbourne Place: Lots 20, 21, 22;
 - xiii. Wickham Drive: Lots 1, 2, 3;

- c. Provide additional landscaping at storm water management facilities to complement the recommended street tree spacing and landscaping on private lots;
- d. Provide additional landscaping for the entire perimeter of the Tot Lot such as holly, tightly spaced at no less than 18 inches and 36 inches at the time of planting to discourage cut through pedestrian traffic between the trailhead parking lot and the HOA tot lot;

4. Lighting

- a. Provide a lighting distribution and photometric plan with summary report and tabulations to conform to IESNA standards for residential/commercial development.
- b. All light fixtures shall be full cut-off fixtures;
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties;
- d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties;
- e. The height of the light poles shall not exceed 14 feet including the mounting base.

5. Pedestrian Circulation

Provide sidewalks at five-feet in width along one side of Fair Hill Road, Weatheroak Drive and Chichester House Road to meet Recreation Guidelines requirements and enhance pedestrian accessibility and safety; provide sidewalk at four feet in width along one side of open section tertiary streets and along private streets;

6. M-NCPPC Park Facility

The Applicant shall comply with the following conditions of approval from M-NCPPC-Park Planning and Research Analysis in the memorandum dated June 17, 2005:

- a. The Applicant shall dedicate to M-NCPPC approximately 191.1 acres of open space, as identified on the Site Plan and the Forest Conservation Plan, per the Upper Rock Creek Area Master Plan. Dedicated areas include Parcel 'Q' and 'H' in Block 'B', Parcel 'A' in Block 'A', Parcel 'B' in Block 'G', and Parcel 'C' in Block 'H'. Land to be conveyed at time of record plat and be free of

trash and unnatural debris. Park boundaries to be staked and signed to distinguish between parkland and private properties;

b. Applicant to construct a 4' wide, natural surface trail, including any needed bridges or stream/wetland crossings, as shown on the revised Pedestrian System Exhibit to the Site Plan dated July 14, 2005, prior to issuance of the 93rd building permit. Exact location of trail will be staked and confirmed by staff and applicant prior to construction and specifications shall be coordinated with, and approved by M-NCPPC staff in coordination with Special Protection Area guidelines; Trail shall be adequately marked and signed by the applicant at the time of construction;

c. Applicant to construct a 4' wide natural surface trail, to extend east/west from the North Branch park trail to the trailhead parking area to be constructed by Applicant; and from Wickham Road to existing parkland along Route 108, as shown on the revised Pedestrian System Exhibit to the Site Plan dated July 14, 2005, prior to issuance of the 93rd building permit. Exact location of trail will be staked and confirmed by staff and applicant prior to construction and specifications shall be coordinated with, and approved by M-NCPPC staff in coordination with Special Protection Area guidelines; Trail shall be adequately marked and signed by the applicant at the time of construction;

d. Applicant to construct a small, paved, park trailhead parking area for twelve (12) cars, prior to issuance of the 93rd building permit. Parking lot to be located on dedicated parkland in Parcel 'F', Block 'B' along Wickham Road for public access to the natural surface trail system. Lot to be constructed to park standards and specifications and to include necessary stormwater management facilities, if required. Applicant to provide engineering and secure all necessary permits including required park permit.

7. Rural Open Space Documentation

Record plat to reflect delineation of Private Rural Open Space areas and make note of the Liber and Folio of an easement agreement or covenant recorded in the land records which restricts the uses in the rural open space to those set forth in the RNC zone and establishes procedures for the management of natural or agricultural features as set forth in the approved site plan. Record plat to have the following note: "The land identified heron as rural open space is within an approved cluster development and subdivision or resubdivision is not permitted after the property is development."

8. Moderately Priced Dwelling Units (MPDUs)

The proposed development shall provide 20 (or 15 percent) MPDUs on-site in accordance Chapter 25A of the Montgomery County Code as amended April 1, 2005. The proposed density

has been increased via optional method to 0.4 units/acre from the standard method of 0.2 units/acre. The location of the MPDUs shall be dispersed as set forth on the exhibit titled "MPDU – Pulte Homes" dated 7/14/05, and shall be identified on the signature set.

9. Transportation

The Applicant shall comply with the following conditions of approval from M-NCPPC-Transportation Planning in the memorandum dated June 16, 2005:

- a. Total development under the subject site plan is limited to 133 single-family units as identified for trip-generation/Local Area Transportation Review purposes. (113 one-family detached homes and 20 duplex MPDU dwelling units);
- b. The Applicant shall enter into a covenant with Park & Planning and the Maryland State Highway Administration (SHA) to make a pro rata contribution for future sidewalk construction along the remaining property frontage of MD 108 north of Wickham Drive, if such improvements are constructed by the State Highway Administration within 60 months of Planning Board approval of the subject site plan.

10. Forest Conservation and Environmental Conditions

The applicant shall comply with conditions of approval for the Final Water Quality Plan and Site Plan issued by M-NCPPC Environmental Planning, memorandum dated July 6, 2005, prior to recording plat or the Montgomery County Department of Permitting Services (DPS) issuance of sediment and erosion control permit:

Applicant to comply with conditions of approval on the final forest conservation plan including the development and implementation of an invasive management plan;

- a. Applicant to construct a split-rail at the rear of lots 14 through 16 Block "B", lots 107 through 111 Block "B", and the rear of lots 1 through 3 Block "E" to delineate and protect forest planting areas;
- b. Imperviousness for the 334-acre tract not to exceed 1,000,573.2 square feet;
- c. On lot imperviousness, not including public sidewalks, not to exceed 774,932.4 square feet;
- d. Applicant to enter into an agreement with M-NCPPC for the purpose of withholding of building permits for thirteen (13) residential lots to ensure compliance with the impervious

limitations and monitoring compliance with the impervious limitations of the site plan. The 13 lots shall be graphically denoted on the site plan. A note shall be placed on the record plat restricting issuance of building permits for lots 20 through 27 Block "B" and lots 30 through 34 Block "B" pending approval from M-NCPPC Environmental Planning;

- e. Applicant to reference agreement on record plat;
- f. All driveways with the exception of driveways for side-load garages or driveways that exceed 80' in length, must be designed as double car width at the public right-of-way;
- g. The developer/builder must submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of the 66th, 100th and 119th building permits. The applicant will submit an impervious report for each of the remaining building permits after the 119th building permit. The impervious reports must include: surveyed 'as-builts' drawings which include dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground;
- h. If the 'as-builts' submitted for 93 units (70% of the total number of units) demonstrate that construction of the units to date is less than or equal to 97% of the total on-lot impervious limitations for the first 93 'as-builts', then M-NCPPC staff will release building permits for 9 of the 13 withheld lots. Building permits for the remaining 4 withheld lots will be released by M-NCPPC staff as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.

If at the 93 'as-built' drawing construction to date is greater than 97% of the total on-lot impervious limitations, then staff will release building permits for the 13 withheld lots as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.
- i. Upon recordation of the plat, applicant shall record in the land records a disclosure of the imperviousness limits and monitoring requirements. The disclosure is intended to give notice to other builders and/or developers in the event of sale of lots by the applicant. This disclosure shall be reviewed and approved by Commission legal staff before recordation;
- j. Applicant prohibited from placing fill material in rural open space areas; except as shown on the site plan dated June 16, 2005 submitted to EPD;

k. Conformance to the conditions as stated in the DPS letter approving the elements of the SPA water quality plan under its purview.

l. Record plat of subdivision shall reflect a Category I Conservation Easement over all areas of stream buffers and forest conservation, including any forest retention areas, forest planting areas, natural regeneration areas, and environmental buffer areas.

m. Provide sediment and erosion control plan with final forest conservation plan;

n. The services of a licensed arborist shall be retained to evaluate the appropriate measures necessary to ensure the survival of the large and specimen trees proposed to be preserved whose critical root zones will be impacted by construction.

11. Historic Preservation

a. Provide protection measures for the historic site during construction and materials staging as approved by M-NCPPC Historic Preservation staff; protect the boundaries of the one-acre site and coordinate in the field with historic preservation staff. The HOA will maintain the historic marker if located on HOA property;

b. Provide, in commemoration of the lost historic site, a one-time grant of \$25,000 to M-NCPPC to be used on surveying and researching historic resources in Planning Areas 10 and 15. The developers contribution of \$25,000 will be provided in the form of a cashier's check made out to M-NCPPC and will be delivered within 60 days of the Planning Board decision;

c. Provide, in commemoration of the lost historic site, an educational marker at a prominent location within the new community that will describe the Chichester House prior to issuance of the 93rd building permit; design, specifications and location of the marker must be reviewed and approved prior to signature set and included in the signature set drawings;

d. Provide, in commemoration of the lost historic site, a road in the new community named "Chichester House Road", as approved by the Planning Board.

12. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated July 5, 2005.

13. Open Space

The applicant shall convey approximately 51.6 acres of Rural Open Space and 12.7 acres of Common Open Space to the Homeowners Association; Rural Open Space parcels and Common Open Space parcels shall be covered by required conservation easements and shall remain in private ownership. Open Space Parcels shall be conveyed free of trash and unnatural debris.

14. Common Open Space Covenant

Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the 93rd building permit that Applicant's recorded Homeowners Association Documents incorporate by reference the Covenant.

15. Home Owners Association Documents

Home Owners Association documents and declaration of covenants shall contain specific language that identifies all activities and limitations regarding the uses allowed within Rural Open Space and Common Open Space. Documents shall be recorded in the land records of Montgomery County. Recorded documents shall be referenced on the record plat.

16. Conservancy Lots

A Site Plan amendment must be approved by the Planning Board or its designee for any accessory structure on a conservancy lot. The site plan amendment must be approved prior to issuance of any building permit for the accessory structure.

17. Development Program

Applicant shall construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. Development Program shall include a phasing schedule as follows:

- a. Streets tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.

- b. Community-wide pedestrian pathways and recreation facilities [list specific facilities] shall be completed prior to issuance of the 93rd building permit.
- c. Landscaping associated with the trailhead_parking lot shall be completed at the time of construction.
- d. Pedestrian pathways [different than the community-wide pedestrian pathway listed in condition b. above] and seating areas associated with each facility shall be completed as construction of each facility is completed.
- e. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- f. Coordination of each section of the development and roads.
- g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, or other features

18. Clearing and Grading

- a. No clearing or grading prior to M-NCPPC approval of signature set of plans;
- b. Prior to issuance of any grading permit, the final location and design of the proposed outfalls, which will be located within 20 feet of the dedicated parkland, shall be reviewed and approved by M-NCPPC park engineering staff;
- c. Prior to issuance of the 93rd building permit, permanent property markers shall be installed by the applicant along the lots or parcels that abut the dedicated parkland as required by staff. Details for the boundary marker shall be shown on the Site Plans.
- d. Prior to release of grading permit, identify the final location for all SWM facilities and associated landscape treatment subject to staff review and approval.

19. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Clearly delineate on the signature set drawings all easements, Limits of Disturbance, ROWs, Forest Conservation Areas, Rural Open Space, Common Open Space, Stormwater Management Parcels, HOA Parcels, PUE's, PIE's, Historic Preservation sites, dimensions

and placement of sidewalks, pedestrian paths, bicycle paths, equestrian trail, high priority forests and storm drain outlets, verified location of existing roads, sidewalks and street trees, development program inspection schedule, numbers and dates of all regulatory approvals;

- b. Provide details and specifications for paved surfaces and trails;
- c. Provide details and specification for all fences and retaining walls, furnishings and fixtures;
- d. Provide a note on the site plans stating the maximum building height;
- e. Label minimum setbacks for the building envelope on the site plans.

20. Monument Signage

The monument signage shall be constructed in accordance with the details and dimensions shown on Sheet No. LP-13 titled "Foundation Planting, Monument Signage, and Open Play Area Details" dated 6/9/05.

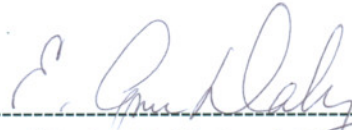
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

APPROVED AS TO LEGAL SUFFICIENCY
DYB 1/20/06
MUNICIPAL LEGAL DEPARTMENT

CERTIFICATION OF BOARD ADOPTION OF OPINION

At its regular meeting, held on **Thursday, January 26, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Site Plan 8-05028, The Reserve at Fair Hill**. Vice Chair Perdue was temporarily absent.



Certification As To Vote of Adoption
E, Ann Daly, Technical Writer



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

NOV 13 2006
MCPB No. 06-56
Site Plan No. 82005028A
Project Name: Reserve at Fairhill
Hearing Date: September 21, 2006

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on May 1, 2006, Pulte Homes ("Applicant"), filed a site plan amendment application designated Site Plan No. 82005028A ("Amendment") for approval of the following modifications:

- 1) Increase the widths of the private streets from 18 feet to 20 feet and private driveways from 14 to 20 feet;
- 2) Adjust the lot areas due to the increase in pavement width;
- 3) Adjust the locations of the sidewalks and public utility easements (PUEs) on the private streets due to the increase in pavement width;
- 4) Modify the building restriction lines on the private streets due to the increase in pavement width;
- 5) Modify the impervious calculations to reflect private street and private driveway widening, driveway reduction, and sidewalk reduction;
- 6) Remove the center cul-de-sac islands due to radii requirements from the Fire Marshall;
- 7) Modify the radii on Bansford Place and Hawkstone Court from 40 feet to 45 feet and the right-of-way due to requirements from the Fire Marshall;
- 8) Reduce the length of the sidewalk around the private street cul-de-sacs and place a 25-foot truncation on the private streets at the request of MCDPS during review of Storm Drain and Paving Plans;
- 9) Modify the lot lines of the stormwater management facilities and relocate one of the stormwater management facilities due to final design comments from the Department of Permitting Services;

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated September 8, 2006 setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on September 21, 2006, Staff presented the Amendment to the Planning Board as a consent item for its review and action (the "Hearing"); and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 82005028A; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this written resolution is NOV 13 2006 (which is the date that this opinion is mailed to all parties of record); and

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


* * * * *

MCPB No. 06-56
Site Plan No. 82005028A
Project Name: Reserve at Fairhill
Page 3

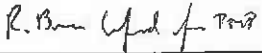
CERTIFICATION CLAUSE

At its regular meeting, held on September 21, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Robinson, seconded by Commissioner Wellington, and with Commissioners Hanson, Perdue, Robinson and Wellington voting in favor, and with Commissioner Bryant absent. This Resolution constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for (Minor) Site Plan Amendment No. 82005028A The Reserve at Fairhill.

Adopted by the Montgomery County Planning Board this 21st day of September 2006.



Royce Hanson
Chairman, Montgomery County Planning
Board



Trudye M. Johnson
Executive Director

APPENDIX B (Environmental Planning Staff Memo)



MEMORANDUM

TO: Molline Smith,
Development Review

VIA: Mark Pfefferle, Acting Chief *MP*
Environmental Planning

FROM: Josh Penn, *JP*
Environmental Planning

DATE: December 1, 2010

SUBJECT: Reserve at Fair Hill
Site Plan 8-05028 Amendment

RECOMMENDATION

Staff recommends approval of the Site Plan 8-05028 amendment.

BACKGROUND

The 334-acre property is located southeast of the intersection Olney-Laytonsville Road (MD Route 108) and Mount Zion Road in the Olney areas. Wickham Road bisects the property into eastern and western tracts. The property is zone RNC and is located in the Upper Rock Creek Special Protection Area. The applicant is developing the site with 113 single-family detached units, 20 MPDU duplexes, and associated infrastructure. The property is well under construction.

The original site plan, forest conservation plan, and special protection area water quality plan was approved by the Planning Board on February 2, 2006. The applicant has recorded all necessary conservation easements and has planted all stream buffers according to the approved final forest conservation plan. The trees were planted over two years ago.

PROPOSED AMENDMENTS

The applicant is proposing to amend the site plan conditions related to the impervious cap, withheld lots, and the triggers which would be used to release the withheld lots.

10. Forest Conservation and Environmental Conditions

* * *

Original Condition d.:

Applicant to enter into an agreement with M-NCPPC for the purpose of withholding building permits for thirteen (13) residential lots to ensure compliance with the impervious limitations of the site plan. The 13 lots shall be graphically denoted on the site plan. A note shall be placed on the record plat restricting issuance of building permits for lots 20 through 27 Block "B" and lots 30 through 34 Block "B" pending approval from M-NCPPC Environmental Planning.

Revised Condition d.:

Applicant to amend the Impervious Surface Compliance Agreement, dated December 11, 2006, with M-NCPPC for the purpose of withholding of building permits for four (4) residential lots identified as Lot 1, Block A, Lot 4, Block F and Lots 17 and 23, Block B (the "Withheld Lots") to ensure compliance with the impervious limitations and monitoring compliance with the impervious limitations of the site plan. The 4 Withheld Lots shall be graphically denoted on the site plan.

* * *

Original Condition g.:

The developer/builder must submit an impervious surface report to M-NCPPC Environmental Planning staff prior to issuance of the 66th, 100th and 119th building permits. The applicant must submit an impervious report for each of the remaining building permits after the 119th building permit. The impervious reports must include: surveyed 'as-builts' drawings which include dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground.

Revised Condition g.:

The applicant must submit to M-NCPPC Staff Impervious Surface Reports on a monthly basis. The Impervious Surface Reports must include: surveyed "as-builts" drawings and/or wall check plans, which show dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground;

* * *

Original Condition h.:

If the 'as-builts' submitted for 93 units (70% of the total number of units) demonstrate that construction of the units to date is less than or equal to 97% of the total on-lot impervious limitations for the first 93 'as-builts', then M-NCPPC staff will release building permits for 9 of the 13 withheld lots. Building permits for the remaining 4 withheld lots will be released by M-NCPPC staff as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.

If at the 93 'as-built' drawing construction to date is greater than 97% of the total on-lot impervious limitations, then staff will release building permits for the 13 withheld lots as staff determines compliance with the on-lot impervious limitations. The building permit for lot 25 Block "B" shall be the last one released and building permits for lots 23 and 24 Block "B" the second and third last released.

Revised Condition h.:

If the submitted Impervious Surface and M-NCPPC reviewed reports for the first 100 units demonstrate that construction of the units is less than or equal to 80% of the total on-lot impervious area shown for the first 100 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then M-NCPPC staff will release building permits for the Withheld Lots.

If the submitted Impervious Surface and M-NCPPC reviewed reports for the first 100 units show that construction of the units is greater than 80% of the total on-lot impervious area shown for the 100 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then staff will release building permits for the Withheld Lots as staff determines compliance with the on-lot impervious limitations.

STAFF ANALYSIS

This site is within the Upper Rock Creek Special Protection Area has an 8 percent impervious limitation. The originally approved site plan 820050280 set this impervious limitation at 22.97 acres impervious surface, or 6.88 percent of the gross tract area. The on-lot allowance of impervious surfaces was set at 17.79 acres of that overall 22.97 acres. To help ensure that the project did not exceed the impervious limitations for the site, conditions 10 d, g, and h were adopted by the

8787 Georgia Avenue, Silver Spring, Maryland 20910 Environmental Planning: 301.495.4540 Fax:
301.495.1310

www.MontgomeryPlanning.org

Planning Board as a condition of Approval of the site plan.

Condition 10d required that 13 residential lots be withheld to ensure the project was in compliance with the impervious surface limitations. Condition 10g set up a reporting timetable of how and when updates on the status of the project in regards to impervious surfaces constructed. Condition 10h set up the framework for when the withheld lots as defined in 10d could be released.

The applicant has requested to amend conditions 10 d, g, and h of the site plan approval to help facilitate the release of withheld building permits earlier than originally intended. The applicant believes that the project is far below the impervious limitations.

The revised conditions 10 d, g, and h lower the number of withheld lots, updates the reporting framework, and hastens the release of the final four withheld lots.

The applicant has provided an impervious area projection chart (attachment A) which indicates the current impervious levels and projected impervious levels through the end of the project. Based upon the submitted impervious surface reports Environmental Planning believes the to date numbers are correct and the estimated projections to be consistent with the numbers and trends provided to date.

The impervious area projection chart submitted by the applicant shows that as of November 3, 2010 the combination of surveyed "as-builts" for the completed units and "projected" unbuilt or under construction units for the first 86 shows that the imperviousness is 46% of the total allowable on-lot impervious area. The 86th as-built would mark almost 65% completion of the total number of units allowed under the approved plan. At 65% completion if the impervious surface were distributed equally amongst the lots it could be expected the percent imperviousness allowed would be equal the completion percentage. At the 86th as-built the project is 19% below the impervious surface limit if impervious surface area was split equally amongst the lots.

The applicant projects that at the time when only the last 4 withheld lots are proposed to be released the project would be 75% complete and only 52% and 55% capacity of the total on-lot impervious surface limitation would be used. The applicant is also project that at time of final build out for all 133 units the on-lot impervious surface area will be at 72% of the allowed 17.79 acres. The last 33 units will make up approximately 20% of the approved on-lot imperviousness.

Environmental Planning staff believes that the revised conditions retain the original intent and goals of the original conditions. Both the "to date"

calculations and the projected final impervious numbers indicate that the revised conditions are sufficient and that the ultimate impervious surface limitations will be met. For the Board's information the 22.97 acres of imperviousness does not include "improvements" homeowners may make to their lots after taking possession of the structures. These improvements can include things like patios, sheds, swimming pools, pool decks etc. The imperviousness cap only applies to the developer of the property.

The Reserve at Fair Hill Impervious Area Projection Chart

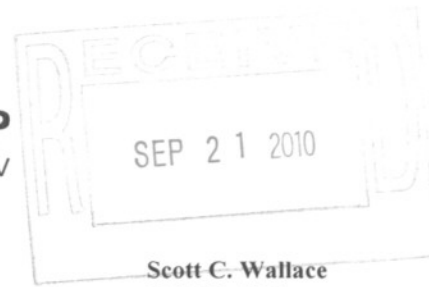
Release of
4 lots

Based on current information as of 11/3/10

	10 MPDUs permitted			Current Status	Release of 9 lots		Submit Impervious Report for each building permit after 119th permit						Projected Final		
					(4 asbuilts inc.)	(4 asbuilts inc.)	(4 asbuilts inc.)	(4 asbuilts inc.)	(4 asbuilts inc.)	(4 asbuilts inc.)	(4 asbuilts inc.)				
	2010				2011										
	8/31/2010	09/30/10	10/31/2010	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	August	September	
Permits	88	89	103	105	109	113	117	121	125	129	133				
As-Builts (includes wall checks)	70	78	83	88	90	94	98	102	106	110	114	118	122	133	
Houses left to permit	45	44	30	28	24	20	16	12	8	4					
Houses left to build	63	57	50	47	43	39	35	31	27	23	19	15	11	0	
Market Rate Units Released for Sale	22	21	17	15	11	16	12	8	8	4	0	0	0	0	
MPDUs available	10	10													
Market rate units in reserve	13	13	13	13	13	4	4	4							
acres) allowed on 133	17.79														
Average per lot impervious area (in acres) allowed for remaining 73 lots (as of 9/3/2010)	0.16 acres														
PROJECTION ASSUMING IMPERVIOUS AREA PER LOT WILL REMAIN ROUGHLY THE SAME AS PREVIOUS CONSTRUCTION															
	(In Acres)	7.64	7.65	7.85	8.15	8.55	8.95	9.35	9.75	10.15	10.55	10.96	11.35	11.75	12.85
Projection assuming current as-built lot impervious average = 0.1 ac.	(% of total lot impervious allowed)	43%	43%	44%	46%	48%	50%	52%	55%	57%	58%	61%	64%	66%	72%

APPENDIX C (Statement of Justification)

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW



Scott C. Wallace
301.961.5124
swallace@linowes-law.com

September 21, 2010

By Hand Delivery

Mr. Robert Kronenberg
Development Review
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Pulte Homes Corporation – The Reserve at Fair Hill-Site Plan No. 8-05208-Limited Site Plan Amendment Application

Dear Mr. Kronenberg:

This office represents Pulte Homes Corporation (“Pulte”), the owner and developer of the referenced residential development located on the west side of Olney-Laytonsville Road (MD Route 108) at the intersection of MD 108 and Wickham Road (the “Property”). The Property is approved for development of 133 residential dwelling units, including 20 Moderately Priced Dwelling Units (“MPDUs”) pursuant to Preliminary Plan No. 1-04110 (the “Preliminary Plan”) and Site Plan No. 8-05028, as amended (the “Site Plan”), which was originally approved by Opinion dated February 2, 2006, attached as Attachment “1” (the “Site Plan Opinion”). As discussed in greater detail below, the purpose of this letter is to request a Limited Amendment to the Site Plan to modify Condition 10 of the Site Plan Opinion regarding the withholding of building permits for certain lots until compliance with on-lot impervious surface area limits for the approved development is demonstrated.

By way of background, the Property is zoned Rural Neighborhood Cluster and originally contained approximately 334 acres.¹ As noted above, the Property is approved for the development of 133 dwelling units and associated amenities and infrastructure (the “Project”). The Property is located in the Upper Rock Creek Special Protection Area, which requires an 8% impervious surface limit for the Project. In this regard, Condition 10 of the Site Plan Opinion imposed, in part, (1) an on-lot impervious limit of 774,932.4 square feet (SF); (2) a requirement for monitoring and reporting on on-lot impervious area at designated stages of buildout; (3) a requirement for M-NCPPC Staff to withhold building permits for 13 of the approved lots (the

¹ The Preliminary Plan and the Site Plan required the conveyance of approximately 191 acres of the Property to the M-NCPPC as parkland, which has been completed.

Mr. Robert Kronenberg
September 21, 2010
Page 2

“Withheld Lots”) until impervious area monitoring reports demonstrated that the total on-lot impervious areas for the Project at 70% buildout was at or below the projected on-lot impervious area for that stage of the Project; and (4) a requirement for Pulte to enter into an agreement with the Planning Board setting forth the terms and procedures for the required impervious area reporting and the release of permits for the Withheld Lots.

Pursuant to Condition 10 of the Site Plan Opinion, Pulte and the Planning Board entered into an Impervious Surface Compliance Agreement dated December 11, 2006 (the “Impervious Area Agreement”) setting forth the terms and procedures for the submission and review of on-lot impervious surface reports and the release of the Withheld Lots. In particular, pursuant to the Impervious Area Agreement (and Condition 10 of the Site Plan Opinion), 9 of the 13 Withheld Lots are to be released upon demonstration by Pulte that at the time that the 93rd unit had been constructed (*i.e.*, at 70% buildout of the Project), on-lot imperviousness was at or below 97% of the estimated on-lot imperviousness for those 93 units shown on the On-Lot Impervious Area Table included on Sheet SP-1A of the Certified Site Plan for the Project (the “On-Lot Impervious Area Table”). Thereafter, the remaining 4 Withheld Lots will be released as Staff determines compliance with impervious limitations for the last stage of the Project.

Development of the Project pursuant to the Preliminary Plan and the Site Plan began in the fall of 2008. To date, 70 houses, including 10 of the required MPDUs, have been sold and constructed to allow “as-built” plans to be prepared, 14 houses are under construction and 13 lots are under contract. This leaves 36 lots remaining to be sold, including the 13 Withheld Lots. Overall, given the difficult economic conditions over the last few years, the Project has been successful. (In addition, as discussed below, the Project to date has resulted in significantly less on-lot imperviousness than was estimated at the time of Site Plan approval.)

However, given lot sales projections for the remainder of 2010, Pulte will “run out” of lots to sell prior to reaching the trigger for release of the permits for the 13 Withheld Lots, which, as noted above, is the completion of construction of the 93rd house in the Project. In this regard, Pulte does not release lots for sale until there are no impediments to the release of building permits. Further, there is typically an 8-10 month period between the point at which a lot is released for sale and the point at which construction of the house on the lot is completed in order to allow an “as-built” to be prepared showing on-lot impervious area.

Pulte projects that it will release for sale its last available lot, other than the Withheld Lots, in November of 2010. However, Pulte does not project it will have the 93rd house constructed to the point that an “as-built can be prepared, which is necessary to allow release of the Withheld

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Lots pursuant to Condition 10 of the Site Plan Opinion, until late March of 2011. This will create a four-month gap in construction activity.

In order to maintain an adequate supply of lots for sale and to allow construction activity at the Project to continue uninterrupted, including the continued employment of work crews, Pulte requests a modification of Condition 10 to allow new triggers for release of the Withheld Lots. The proposed revised text of Condition 10 is attached as Attachment "2". As revised, Condition 10 would allow release of 9 of the 13 Withheld Lots upon demonstration that the on-lot impervious area for a total of 84 houses (which will be calculated in the Impervious Surface Reports based on as-built drawings, wall check plans, and/or building permit plans for permits that have been issued) is at or below 80% of the projected total on-lot impervious area for the 84 houses as shown on the revised On-Lot Impervious Area Table. Release of the last 4 Withheld Lots would occur if the Impervious Surface Reports for a total of 94 houses (or 70% of the Project) show on-lot impervious area at or below 80% of the projected total on-lot impervious area for the 94 houses.²

The requested modification to Condition 10 of the Site Plan Opinion to adjust the triggers for the release of the Withheld Lots will not result in a total on-lot impervious area that exceeds the on-lot impervious limit imposed on the Project pursuant to the Site Plan Opinion. To the contrary, development of the Project to date has resulted in significantly less on-lot impervious area than was originally projected for this stage of the Project as set forth in the On-Lot Impervious Area Table. In this regard, on or about March 30, 2010, Pulte's engineering consultant for the Project, VIKA, filed an impervious surface report with Staff that showed, based on as-built data for 46 constructed houses, the on-lot impervious area for the houses was approximately 28% below the projected on-lot impervious area for the houses as shown on the On-Lot Impervious Area Table. Further, based on the Impervious Surface Report submitted by VIKA to Staff concurrently with this Application, which is based on data available as of August 31, 2010, as-built data for a total of 70 houses shows that total on-lot impervious area for the 70 houses is approximately 25% below the impervious area projected for the houses on the On-Lot Impervious Area Table. Finally, based on a conservative projection of on-lot imperviousness at full buildout of 133 houses, calculated by using the impervious area of the largest Pulte models available for the sizes

² Under Condition 10 of the Site Plan Opinion, the last 4 Withheld Lots are designated as Lots 22-25, Block B. Pulte requests that the last 4 Withheld Lots subject to this trigger for release be designated as Lots 17 and 23, Block B, Lot 1, Block A, and Lot 4, Block F.

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of the remaining lots in the Project, on-lot impervious area at full buildout is projected by VIKA to be approximately 22% below the total on-lot impervious area allowed under the Site Plan.³

Accordingly, the requested modification to Condition 10 will not impact or modify the on-lot impervious area limit imposed pursuant to the Site Plan Opinion. Further, under the modification to Condition 10 as proposed, Pulte will provide monthly on-lot Impervious Area Reports to M-NCPPC Staff and Staff will retain the right to withhold lots if on-lot impervious areas exceed the revised triggers for permit release for the Withheld Lots. In this regard, if the Limited Amendment is approved, the terms and conditions of the modified Condition 10 for reporting and permit release will be set forth in an amendment to the Impervious Area Agreement. In summary, the requested revision to Condition 10 will not result in higher levels of impervious area for the Project as approved for the Project under the Preliminary Plan and Site Plan and stringent, quantifiable measures to ensure compliance with impervious area limits will remain in place.

Moreover, the modification of the lot release schedule is necessary to ensure that lot sales and construction activity at the Project are not interrupted. Given the significant economic downturn of the past few years, allowing this successful project to continue to full buildout without any interruption in construction activity will help promote the economic recovery for County residents and workers. For these reasons, we request approval of a Limited Site Plan Amendment to modify Condition 10 as shown on Attachment "2".

Enclosed is an application for the Limited Amendment, with required application materials and application fee. Upon review of these materials, please do not hesitate to contact us if you have any questions or need additional materials.

Very truly yours,

LINOWES AND BLOCHER LLP



Scott C. Wallace

SCW:cp

³ Total on-lot impervious area at full buildout is projected to be approximately 604,447 SF (13.90 acres). Total permitted on-lot impervious area is 774,932.4 SF (17.79 acres).

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cc: Mr. Mark Pfefferle
Mr. Pat Williams
Ms. Kathleen Kulenguski
Ms. Meredith Byer
Barbara Sears, Esq.

PROPOSED REVISED SITE PLAN OPINION CONDITION NO. 10

10. Forest Conservation and Environmental Conditions

* * *

d. Applicant to amend the Impervious Surface Compliance Agreement, dated December 11, 2006, with M-NCPPC for the purpose of withholding of building permits for four (4) residential lots identified as Lot 1, Block A, Lot 4, Block F and Lots 17 and 23, Block B (the “Withheld Lots”) to ensure compliance with the impervious limitations and monitoring compliance with the impervious limitations of the site plan. The 4 Withheld Lots shall be graphically denoted on the site plan.

* * *

g. The applicant must submit to M-NCPPC Staff Impervious Surface Reports on a monthly basis. The Impervious Surface Reports must include: surveyed “as-builts” drawings, wall check plans, and/or building permit plans (for units with permits that have been issued), which show dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground;

h. If the Impervious Surface Reports submitted for a total of 103 units demonstrate that construction of the units is projected to result in on-lot impervious area less than or equal to 80% of the total on-lot impervious area shown for the first 103 units on the On-Lot Impervious Area Table shown on Sheet SP-1A of the site plan, then M-NCPPC staff will release building permits for the Withheld Lots.

If Impervious Surface Reports for a total of 103 units show that construction of the units is projected to result in on-lot impervious area greater than 80% of the total on-lot impervious area shown for the 103 units on the On-Lot Impervious Area Table, then staff will release building permits for the Withheld Lots as staff determines compliance with the on-lot impervious limitations.

DRAFT

AMENDMENT TO IMPERVIOUS SURFACE COMPLIANCE AGREEMENT

This Amendment to Impervious Surface Compliance Agreement (the “Amendment”) is made this _____ day of _____, 2010, by and between Pulte Home Corporation (“Pulte”), and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the “Planning Board”).

BACKGROUND

WHEREAS, the Planning Board is a body corporate created by the General Assembly of Maryland which, pursuant to Article 28, § 7-111 of the Annotated Code of Maryland (1957, 1997 Repl. Vol.), is authorized to approve site plans pursuant to Division 59-D-3 of the Montgomery County Zoning Ordinance, Chapter 59 of the Code (the “Zoning Ordinance”).

WHEREAS, Pulte is the developer of a residential subdivision located southeast of the intersection of MD Route 108 and Mount Zion Road in Olney and known as The Reserve at Fair Hill (“Property”).

WHEREAS, Pulte filed and received Planning Board approval, with conditions, of a site plan for construction of 133 dwelling units on the Property (the “Project”) designated Site Plan No. 8-05028 (the “Site Plan”) pursuant to an Opinion mailed on February 2, 2006 (the “Site Plan Opinion”). The Site Plan was subsequently amended by Resolution of the Planning Board No. 06-56 dated November 13, 2006 approving Site Plan No. 82005028A (the “Site Plan Amendment”).

WHEREAS, pursuant to Condition 10 of the Site Plan Opinion, Pulte and the Planning Board entered into an Impervious Surface Compliance Agreement dated December 11, 2006 (the “Agreement”) to limit the total imperviousness on the Property.

WHEREAS, on December 16, 2010, the Planning Board approved an amendment to the Site Plan designated Site Plan No. 82005028C that required Pulte and the Planning Board to amend the Agreement in accordance with the conditions of approval of Site Plan No. 82005028C.

NOW, THEREFORE, the parties desire to set forth herein their respective requirements and obligations.

AGREEMENT

1. The foregoing recitals are incorporated herein in as if restated in full.
2. The sixth recital to the Agreement is deleted and the following is inserted in its place:

WHEREAS, Condition 10(d) of the Site Plan Opinion required the Applicant to enter into an Impervious Surface Compliance Agreement with the Planning Board to limit the total imperviousness on the Property, based on the Site Plan Amendment, to 1,022,789 square feet, and to limit on-lot imperviousness, not including public sidewalks, to 774,932.4 square feet.

3. Paragraph 2 to the Agreement is deleted and the following is inserted in its place:

2. Building Permits.

Building permits for four (4) residential lots, identified on the Certified Site Plan for Site Plan No. 82005028C as Lot 1, Block A, Lot 4, Block F, and Lots 17 and 23, Block B, shall be withheld from release by Planning Board Environmental Staff (“Staff”) to ensure compliance with the imperviousness limitation set forth in Paragraph 1B of this Agreement (the “Withheld Lots”). Building permits for the Withheld Lots will be released by the Staff in accordance with the requirements of Paragraphs 3A and 3B of this Agreement.

4. Paragraph 3 to the Agreement is deleted and the following is inserted in its place:

3. Reporting and Release of the Withheld Lots.

A. Pulte must submit Impervious Surface Reports to Staff on a monthly basis. The Impervious Surface Reports must include: surveyed “as-built” drawings or wall check plans, which show dimensions for buildings, driveways, sidewalks, leadwalks, porches, patios, chimneys, welled exits, rear exits and any building feature that is two feet or less from the ground.

B. If the Impervious Surface Reports submitted for a total of 100 houses demonstrate that construction of the houses is projected to result in a total on-lot impervious area less than or equal to 80% of the total on-lot impervious area shown for such houses on the On-Lot Impervious Area Table shown on Sheet SP-1A of the Certified Site Plan for Site Plan No. 82005028C, then Staff will release building permits for the Withheld Lots.

If the Impervious Surface Reports submitted for a total of 100 houses demonstrate that construction of the houses is projected to result in on-lot impervious area greater than 80% of the total on-lot impervious area shown for such houses on the On-Lot Impervious Area Table, then Staff will release building permits for the Withheld Lots as Staff determines compliance with the on-lot impervious limitations.

5. Paragraph 7 to the Agreement is deleted and the following is inserted in its place:

7. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed fully given if mailed by first-class mail, postage prepaid, if to (a) Pulte, to Patrick Williams, Pulte Home Corporation, 10600 Arrowhead Drive, Suite 225, Fairfax, VA 22030, with a copy to Barbara A Sears, Esq., Linowes and Blocher LLP, 7200 Wisconsin Avenue, Suite 800, Bethesda, MD 20814; and if to (b) the Planning Board, to Chairman, Montgomery County Planning Board, 8787 Georgia Avenue, Silver Spring, MD 20910, with a copy to the Office of the General Counsel, Montgomery County Planning Board, 8787 Georgia Avenue, Silver Spring, MD 20910. The parties shall be responsible for notifying each other of any change of address. Notwithstanding anything to the contrary contained above, notice will be valid to the parties, upon being sent as above.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set our hands and seals this _____ day of _____, 2010.

WITNESS/ATTEST:

PULTE HOME CORPORATION

By: _____

Title: _____

WITNESS/ATTEST:

MONTGOMERY COUNTY
PLANNING BOARD

By: _____

Title: _____