



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

JAN 14 2021

MCPB No. 20-129
Preliminary Plan No. 120200050
Creekside at Cabin Branch
Date of Hearing: December 3, 2020

RESOLUTION

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

WHEREAS, on October 31, 2019, Shiloh Farm Investments, LLC & Pulte Home Corporation (“Applicant”) filed an application for approval of a preliminary plan of property to create 326 lots and 22 parcels for a residential development consisting of 117 single-family detached units and 208 townhouse units, including 12.5% MPDUs, and one existing single-family detached dwelling unit for a total of 326 dwelling units in the RNC Zone located on the northwest quadrant of the intersection with MD 121 (Clarksburg Road) and West Old Baltimore Road (“Subject Property” or “Property”) in the Clarksburg Policy Area and 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* (“1994 Plan”) & 2014 *Clarksburg Ten Mile Creek Area Limited Amendment* (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120200050, Creekside at Cabin Branch (“Preliminary Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board, dated November 20, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 3, 2020, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on December 3, 2020, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Verma, seconded by Commissioner Cichy, with a vote of 3-1; Chair Anderson, Commissioners Cichy and Verma voting in favor, Commissioner Patterson voting against, with Vice Chair Fani-Gonzalez being absent

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200050 to create 326 lots and 22 parcels for a residential development consisting of 117 single-family detached units and 208 townhouse units, including 12.5% MPDUs, and one existing single-family detached dwelling unit for a total of 326 dwelling units on the Subject Property, subject to the following conditions:¹

General Approval

- 1) This Preliminary Plan is limited to 326 lots and 22 parcels for a residential development, including a minimum of 12.5 percent moderately priced dwelling units (MPDUs). Based on the FY20 Schools Test, this approval is limited to 60 single-family detached dwelling units and 127 single-family attached dwelling units for a total of 187 dwelling units.
- 2) The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. 120200050, approved as part of this Preliminary Plan:
 - a. Prior to certification of the Preliminary Plan, the Applicant must revise the Preliminary Forest Conservation Plan to address minor comments in ePlans.
 - b. The Final Forest Conservation Plan must include an updated limit of disturbance and Tree Variance Request to include applicable affected trees associated with the historic Cephas Summers House demolition and reconstruction, and the Final Stream and Wetland Restoration Plan. Mitigation for trees removed will be determined at the time of Final Forest Conservation Plan approval with the Site Plan.
 - c. The Applicant may establish a forest bank as referenced on the approved Preliminary Forest Conservation Plan. The Final Forest Conservation Plan must designate the specific areas on the Property proposed for the potential creation of a forest bank and may only include planted forest.
 - d. The creation of a forest bank on the Property is subject to final approval of the amount and specific areas to be included in the bank, as determined after consultation with M-NCPPC Staff.
 - e. The final approval of the forest bank and the administrative procedures for implementing the bank will be determined after meeting with Staff

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

and prior to initiating any transactions for the forest bank. The Applicant may only sell credits from the forest bank while they maintain ownership of the land where the bank exists.

- f. Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers that will not be conveyed to the M-NCPPC Department of Parks, as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat(s).
- 3) Impervious surfaces are limited to no more than six percent (6%) of the land area subject to this Application located within the Clarksburg West Environmental Overlay Zone as shown on the approved Impervious Area Exhibit, including the allocation of 26,136 square feet of impervious area for future improvements on the ten (10) acre neighborhood park and 4,306 square feet of impervious area for the reconstruction of the historic Cephas Summers House and the associated driveway.
- 4) The Applicant must submit and obtain Planning Board approval of a Final Conservation Management Plan at the time of Site Plan. The Final Conservation Management Plan must be reviewed by Staff from the M-NCPPC Planning Department, M-NCPPC Department of Parks, and the Montgomery County Department of Environmental Protection ("DEP").
- 5) The Applicant must convey to Maryland-National Capital Park & Planning Commission ("Commission") the +/-280.8 acre portion of the Subject Property identified as Phase 1 and Phase 2 as shown on Sheet 18B of the Preliminary Plan for use as a master planned park per the 2014 *Ten Mile Creek Area Limited Amendment Master Plan*. Phase 1 conveyance areas to be deeded to the Department of Parks prior to the release of the fifth (5th) building permit. Phase 2 conveyance areas to be deeded to the Department of Parks after project completion and stabilization following project completion and planting maintenance period or 10 years from the release of the fifth building permit, whichever comes first. All work proposed on future parkland must be reviewed and approved through the Park Construction Permit review process. Prior to accepting the conveyance of any parkland, the following conditions must be met:

- a. Applicant to conduct a boundary survey and set field survey markers (Green and Whites) as part of the land transfer.
 - b. Areas to be conveyed to Parks must be free and clear of unnatural debris and structures, unless otherwise approved.
 - c. Afforestation projects occurring within Park conveyance areas need be reviewed and approved by Parks Natural Resources Staff and Urban Forester. Afforestation occurring in areas of parkland conveyance needs to be considerate of hazard tree distance standards and maintenance requirements relative to planned improvements.
- 6) Prior to Site Plan approval, Department of Parks reserves the right to modify the planned trail alignment to realign trail sections from HOA land to future park property where reasonable and feasible. A contiguous trail alignment must be implementable as part of Phase 1 of Park conveyance and include the ability to build and provide public access through Phase 2 conveyance area.
 - 7) The Applicant must not grade (fill) on the neighborhood conservation park.
 - 8) The Applicant must submit and obtain Planning Board approval of a Final Stream and Wetland Restoration Plan at the time of Site Plan and must be reviewed by M-NCPPC Planning Department, M-NCPPC Department of Parks, and the Montgomery County Department of Environmental Protection. The Final Stream and Wetland Restoration Plan must:
 - a. Include a field survey and conceptual engineering designs, including proposed restoration approach, details, plan and profile.
 - b. Take into account changed hydrology at the site as a result of any new development and accommodate flexibility at the time of construction to adapt to any adjustments that may have occurred within the areas of the channel identified for restoration.
 - 9) The Applicant must provide a minimum of eight (8) trailheads for a natural surface trail as shown on Sheet 18B of the Preliminary Plan. Where trailheads exist between single-family detached units, the minimum distance between residential buildings must be forty (40) feet wide.
 - 10) The Applicant must enter into a reciprocal access easement with M-NCPPC to allow access to the natural surface trails in the Conservation Management Areas. The easement shall be for the sole purpose of reciprocal access and must be compatible with the overall site layout of the Applicant's property and also compatible with the M-NCPPC trail alignment. The public access easement may be reasonably relocated by the Applicant with Department of Parks' review and approval.

- 11) The Applicant must provide an easement for a continuous natural surface trail connection from the residential development to the 10-acre neighborhood park.
- 12) Prior to issuance of sediment control permits or prior to record plat, whichever one comes first, the Applicant must provide the M-NCPPC Department of Parks and Planning Department Staff the results of the Rare Threatened and Endangered Species surveys with mitigation measures for areas within the Limits of Disturbance for the development on the Property. The Rare Threatened and Endangered Species surveys must be performed per standard protocols by an experienced professional. Prior to issuance of sediment control permits or prior to record plat, whichever one comes first, the Applicant must implement the mitigation measures referenced in the survey.
- 13) Prior to certification of the Preliminary Plan, or submission of a Site Plan, whichever comes first, the Applicant must submit a Noise Analysis for the Subject Property to determine the projected interior and exterior noise levels for the proposed development. The results of the Noise Analysis may require a Barrier Analysis with resulting recommended mitigation measures to be included on the Site Plan.

Outside Agencies

- 14) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated November 19, 2020, and, with the exception of condition 8, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 15) Prior to issuance of a building permit on the Subject Property, the Applicant must satisfy MCDOT’s design requirements for access and improvements.
- 16) Prior to issuance of a building permit, the Applicant must satisfy the Maryland State Highway Administration’s requirements for improvements.
- 17) The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“MDSHA”) in its letter dated October 19, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as

set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

- 18) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its Preliminary Water Quality Plan approval letter dated September 3, 2020, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 19) The Applicant must follow the Montgomery County Department of Permitting Service’s requirements for soil preparation, topsoiling, soil stabilization and soil amendments for any graded areas of 1,000 square feet or more that will be vegetated with grass. These requirements must be reflected on the Final Water Quality Plan, subject to MCDPS approval.
- 20) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS), Fire Department Access and Water Supply Section in its letter dated September 17, 2020, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.
- 21) The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in an email dated July 21, 2020.
- 22) The Planning Board has reviewed and accepts the recommendations of the Historic Preservation Commission (“HPC”), in its letter dated October 29, 2020 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which HPC may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

Transportation/Access

- 23) The Applicant must dedicate and show on the record plat all land necessary to accommodate right-of-way dedication as illustrated in the Preliminary Plan along the frontage of Clarksburg Road (MD 121).

- 24) Prior to the approval of the Certified Preliminary Plan, the Applicant must illustrate all land necessary to accommodate a minimum of the 40 feet required for right-of-way dedication as measured from the centerline along the entire frontage of West Old Baltimore Road. The Applicant must provide this dedication and demonstrate this on the record plat.
- 25) Prior to the release of the 10th building permit, all conduit necessary to support the eventual signalization of the site entrance at Dowitcher Way and Clarksburg Road (MD 121) must be installed and approved by the Montgomery County Department of Transportation and State Highway Administration. Plans for the implementation of this conduit shall be provided with the application for access permit.
- 26) Prior to the release of the 217th building permit, and no earlier than after the release of the 200th building permit, the Applicant shall perform a signal warrant analysis of the site entrance at Clarksburg Road and Dowitcher Way. The analysis shall assume completion of all development as approved at the time of the study. This analysis shall be submitted to M-NCPPC Planning Staff, MCDOT and MDSHA for review. Prior to the release of the 240th building permit, the Applicant shall install a signal at the main site entrance if, and only if, as reviewed and approved by MCDOT, MDSHA and Planning Staff, the analysis warrants the installation of a signal. No signal shall be required if this signal warrant analysis does not meet required warrants, as determined by MCDOT, MDSHA and Planning Staff.
- 27) The Applicant must dedicate all new public road rights-of-way to the full width designated on the Certified Preliminary Plan, as specified in MCDOT's approval letter.
- 28) The Applicant must construct all private alleys, including any storm drainage facilities, private utility systems and other necessary improvements as shown on either the Preliminary Plan or the subsequent Site Plan within the private alley parcels.
- 29) The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for eighty-four (84) months from the initiation date of this Planning Board Resolution. The Applicant must comply with the following cumulative development triggers for the APF to remain valid:
 - a. Schools – The Schools portion of the APF test is limited to 187 dwelling units (60 single-family detached dwelling units and 127 single-family attached). The Applicant must amend the Preliminary Plan to allow up to 326 total dwelling units on the Property when school capacity is available,

as determined by the applicable Schools test. Provided this occurs within the APF validity period, no other APF tests are required.

- b. Transportation and Other Public Facilities – The Transportation and Other Public Facilities portion of the APF test covers the full density permitted on the Property, up to 326 dwelling units. The development must be phased, as follows:
 - i. Within four years (48 months) building permits for at least 100 dwelling units are issued by Montgomery County.
 - ii. Within six years (72 months) building permits for at least 187 dwelling units are issued by Montgomery County.
 - iii. Within seven years (84 months) all building permits are issued by Montgomery County.

Site Plan Approval

- 30) The Applicant must receive Staff certification of a Planning Board-approved site plan, before clearing, grading or issuance of any building permit. The number and location of site elements, including but not limited to dwelling units, parking, site circulation, sidewalks, and bike paths will be determined through site plan review and approval.
- 31) If an approved site plan or site plan amendment for the Subject Property substantially modifies a lot or right-of-way (ROW) configuration shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan or Site Plan Amendment.
- 32) The final number of MPDUs will be determined at the time of site plan.
- 33) The final setbacks, minimum lot areas, lot dimensions, building coverage, and height of the principal building and accessory structures will be determined at the time of site plan.
- 34) Final approval of the size and location of buildings and open space amenities will be determined at the time of site plan.
- 35) The Historic Area Work Permit (HAWP) for the new construction of the Historic Cephas Summers House must be approved prior to approval of the site plan for the development, and the building permit for the reconstruction of the Historic Cephas Summers House must be filed prior to submission of any building permit application for houses on the remainder of the site.

Record Plats

- 36) The Record Plat must show all private alleys within their own parcel(s).

- 37) The Record Plat must reflect an ingress/egress easement over all private alleys, designated for the benefit of all properties with access to the alleys. All private alleys shall be bound to the standard covenant for private alleys.
- 38) The Record Plat must ensure the recording of minimum 10-foot wide Public Utility Easements (PUE) along the segments of Streets A, B and D as identified on the Certified Preliminary Plan.
- 39) The record plat must show all necessary easements.
- 40) The record plat must provide an access easement to the landlocked Delaney Property identified as parcel—P225 and Tax Map EV12 and located internally in the southern portion of the Property.
- 41) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 42) Prior to recordation of any plat, Site Plan No. 820200160 must be certified by M-NCPPC Staff.

Certified Preliminary Plan

- 43) The certified Preliminary Plan must contain the following note:
Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
- 44) Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a. Include a copy of the resolution and applicable Agency approval letters on the approval sheets.
 - b. Remove the following note on applicable sheets in the Preliminary Plan, *Final Architecture and building height shall be determined at building permit.*
 - c. The Applicant must revise the Cephas Summers House exhibit demonstrating that a 10.21-acre lot is proposed for the Historic Cephas Summers House property. Any applicable sheets with the Historic

Summers Cephas property identified as a parcel must also be relabeled as a lot for consistency.

- d. Update all applicable sheets in the Preliminary Plan to include the additional 0.67 acres of additional land to be conveyed to M-NCPPC Parks. The net tract area and the conservation management area must also be updated to reflect this change.
- e. Sheet 4:
 - i. Update the data table to match the data table in the Staff Report.
 - ii. Replace note 5 with the following note:
There are two historical resources on the site listed on the Maryland inventory of historic places. The Cephas Summers House (m:13-25) is a locally-designated property and includes a 10.21-acre buffer per the approved master plan, and an additional property (m:13-55), are both located along the eastern end of the site boundary.
 - iii. Add lot area for proposed 10.21-acre lot for the Cephas Summers House.
- f. Sheet 18B:
 - i. Include the parcel south and west of the Historic Cephas House property as an HOA parcel.
 - ii. Modify the Phase 2 conveyance area to include 0.67 acres of additional acreage. This area, currently shown to be HOA property, is located between the westernmost proposed cul-de-sac and the mainstem of Ten Mile Creek.

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

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

The layout of the subdivision, including size, width, shape and orientation of the lots is appropriate for the location of the subdivision considering the recommendations in the Master Plan for a walkable residential development with an emphasis on environmental protection. The lots also comply with the dimensional requirements for the RNC Zone and the development standards of the Clarksburg West Environmental (CWE) Overlay Zone as specified in the Zoning Ordinance.

Block Design

The block design depicted on the Preliminary Plan is appropriate for the residential development. The length, width, and shape of all residential blocks are compatible with existing development patterns and land use goals for the Property. A new residential block is located along Clarksburg Road right-of-way in the eastern portion of the Property with several additional blocks extending to the west. The blocks are of an appropriate length and width to accommodate pedestrian and vehicular circulation, and open space. The blocks are designed in a manner to minimize impacts to the environmental features on the Property.

Lot Design

The lot size, width, shape, and orientation are appropriate for the location of the subdivision and for the residential uses. All lots will either front along Clarksburg Road or along the new public roads known as Creekside Boulevard, Sculpin Lane, Connor Road, Pika Court, Reed Drive, Lindsay Drive, and Wood Frog Drive. The Historic Cephas Summers House will be rebuilt in its original location and a 10.21-acre lot will be created to protect its historic setting. The dimensions of the lots will be able to accommodate the proposed buildings and other infrastructure necessary to serve the lots. The lot design for new residential development is also consistent with the size, shape, width of the lots in the Cabin Branch development across Clarksburg Road. Also, the new lot for the Historic Cephas Summers House has a similar size, shape and width of surrounding properties with residential development.

Public Sites and Adequate Open Spaces

The Application includes 81.2 percent of rural open space and therefore exceeds the 80 percent Rural Open Space requirement. The majority of the rural open space area will be conveyed for future parkland, including a 10-acre Local Park recommended in the Master Plan. Additionally, the Application will provide 6.8 percent of open space for recreation and amenities for the residential development. Centrally located is a recreation area that will feature a multi-purpose court, clubhouse, pool, wading pool, a tot lot, and green area. Pocket parks will also be located throughout the development. The Preliminary Plan provides adequate open areas for amenities, recreation, and stormwater management. Public sites and open spaces will be evaluated in detail at the time of Site Plan(s).

Roads

The Project will enhance connectivity to the greater Cabin Branch community of Clarksburg by establishing a semi-regular street grid that enables robust bike and pedestrian access. A new intersection will connect the community to Clarksburg Road at existing Dowitcher Way, which will connect to the greater Cabin Branch community. This intersection may be signalized if required signal warrants are met

by the Application at a later date. Old Clarksburg Road will terminate north of the Property and serve emergency vehicles for enhanced fire access.

The public improvement of Clarksburg Road, now near completion, will likely be finalized prior to construction on the Subject Property. To maintain connection to the two residential properties south of Creekside Boulevard, a new minor connection adjacent to the main entrance will be constructed. Therefore, the design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements.

Transportation Waivers & Modification Requests

1. Minimum Centerline Radius Requirement, Ch. 50.4.3.E.2.g.ii

The Applicant is requesting a waiver of the minimum centerline radius requirement for the public street identified as Lindsay Drive. A secondary street is required to have a centerline radius no less than 150-feet. The Applicant instead requests a reduced radius of 100-feet, the minimum assigned to a tertiary street. The Planning Board supports this request as the tighter radius supports a correspondingly tighter development envelope, thereby reducing grading, deforestation, impervious surface and other environmental benefits as recommended in the Master Plan. The road will continue to operate safely as the road will carry volumes at this corner equivalent to that of a tertiary street for which a 100-foot radius is acceptable. Additionally, the corner will reduce vehicular speeds in this entirely residential neighborhood, enhancing safety for bicyclists and pedestrians. The Planning Board grants the waiver request.

2. Open Section Road Requirement, Ch.49.33.1

The Applicant is requesting a waiver of the requirement that public roads must be constructed with open sections in environmentally sensitive areas. The Subject Property is located in the Ten Mile Creek Special Protection Area. The Director of Department of Permitting Services may approve the installation of curbs and gutters following Planning Board comment if: (A) installing curbs and gutters will not significantly degrade water quality in the area; (B) curbs and gutters are necessary for vehicular or pedestrian safety or the proper grading or maintenance of the road, or to reduce the environmental impact of the road on any park, forest, or wetland; and (C) a preliminary subdivision plan or site plan approved by the Planning Board for the land abutting the portion of the road where curbs and gutters may be installed expressly permits the curbs and gutters to be installed, if either plan is required for the land in question. The Planning Board grants the waiver request.

This Application proposes limited use of curbs and gutters, particularly along roads adjacent to townhomes. The use of curb and gutter design allows for a significantly reduced right-of-way to accommodate a denser housing development which allows for a more efficient use of the Property. Additionally, the reduction in roadway

length due to a more compact development reduces impervious surface. Lastly, the addition of adequate stormwater facilities will alleviate degradation of water quality. The Planning Board grants the waiver request.

3. Road Length for Cul-de-sac, Ch. 50.4.3.E.2.e.iv

The Applicant is requesting a waiver of the restriction of the length of a non through road to no more than 500-feet in length. Two public roads – Connor Street and Creekside Court –terminate in elongated cul-de-sacs, beyond the 500-feet from the nearest intersection, as they follow the ridgeline of the existing topography. This request seeks to approve the extension of these non through roads beyond the 500-foot limit, to approximately 590-feet for Connor Street and approximately 570-feet for Creekside Court. The Board may approve this request if the longer length is found to be necessary due to the unusual shape, size, topography, or environmentally sensitive areas of the subdivision.

The use of these two non-through roads is necessary due to the environmentally sensitive setting of the nearby Ten Mile Creek restricting continuation of these roads any further to the west. Any additional connectivity would require potentially harmful grading and deforestation as the developable area of the Subject Property is limited to the gradual slopes of the ridge crest, which bifurcates the property to the northwest of where these roads separate from Sculpin Lane. The design of the elongated cul-de-sac allows the Application to maximize the use of limited developable land while ensuring the protection of the natural resources within the Ten Mile Creek Special Protection Area. The Planning Board grants the waiver request.

4. Off-Street Parking Requirement for Community Pool & Clubhouse, 59.6.2.4.B

The Applicant is also requesting a waiver of the off-street vehicle parking requirement for the community swimming pool and for the clubhouse. Pursuant to Sect. 59.6.2.4.B the number of parking spaces required for Swimming Pool is sixteen and seven parking spaces are required for the clubhouse. The Applicant is requesting to waive the required off-street parking required for the community pool and clubhouse. In lieu of accommodating these as off-street spaces, the Applicant is providing adequate adjacent public on-street parking along Creekside Boulevard, which includes five spaces and Pika Court, which includes eleven spaces, for a total of sixteen spaces immediately adjacent to the pool. For the clubhouse eight parallel spaces will be available along Creekside Boulevard.

The Project is designed to prioritize pedestrian connectivity, safety, health and environmental responsibility. The community is purposely designed with walkability in mind, with all residents living within an approximately ten-minute walk to these amenities that are centrally located, with the majority within a five-minute walk. The community clubhouse will also include sixteen bicycle parking spaces. The need for parking and driving is therefore significantly reduced, and

perhaps even discouraged in favor of walking and biking. Additionally, the elimination of the surface parking lot reduces impervious area in the Ten Mile Creek SPA, while providing additional opportunities for recreation amenities as part of the open space for residents and visitors. The adjacent on-street parking spaces nevertheless provide a safe, efficient and direct route to the clubhouse. This recommendation has additionally been reviewed and supported by MCDOT and DPS Staff. The Planning Board grants the parking waiver request.

The Lots and Use comply with the basic requirements of Chapter 59

The lots were reviewed for compliance with the dimensional requirements for the RNC and Clarksburg West Environmental Overlay Zones as specified in the Zoning Ordinance. The lots will meet all the dimensional requirements for area, frontage, width, and setbacks in RNC and Overlay zones.

2. *The Preliminary Plan substantially conforms to the master plan;*

The Preliminary Plan substantially conforms to the master plan recommendations outlined in the 2014 *Ten Mile Creek Area Limited Amendment* ("Master Plan"). The Master Plan is a limited amendment to the 1994 *Clarksburg Master Plan & Hyattstown Special Study Area* for the Ten Mile Creek Watershed. The Master Plan retains the 1994 Plan vision but refines the 1994 Plan recommendations to create a well-defined corridor town that provides jobs, homes and commercial activities and the preservation of natural resources. Below is a discussion of the various Master Plan recommendations.

Land Use & Zoning, (Master Plan, p. 9 & 42)

The Master Plan recommends residential development on the Property. The Master Plan recommends optional method development in the Rural Neighborhood Cluster (RNC) Zone with an optional method development density of one unit to the acre. Housing types allowed include a mix of townhouses and detached houses or townhouses units alone (Master Plan, p. 42). The Master Plan recommends a density of one unit per acre for the Pulte Property (Master Plan, p. 42), which is slightly less than the maximum of 1.22 units per acre that could be permitted in the RNC zone. The Application is an optional method cluster development for 326 housing units, with a mix of townhouses and detached houses which at 0.83 units per acre is less density than recommended by the Master Plan. Therefore, the Application is consistent with the land use and zoning recommendations of the Master Plan.

Environment, (Master Plan, p. 14-22)

The Application conforms to the Environmental Resources section of the Master Plan. The Master Plan places a high priority on the protection and enhancement of environmental resources, including forest and water quality, with an added emphasis on protecting and expanding environmental buffers. The Master Plan

incorporates several recommendations that help to achieve the goal of environmental resource protection, including clustering the development in upland areas, limiting impervious surfaces, expanding environmental buffers to include ephemeral streams, wetlands, springs, seeps, erodible soils, and slopes ≥ 15 percent. In addition, the Master Plan recommends protection of interior forest, and specifically on this Property, all forest adjacent to environmental buffers. As in all Special Protection Areas, any unforested environmental buffers must be reforested. Development on the Subject Property will be clustered away from the stream valley areas, protecting over 172 acres of existing forest resources, and the Applicant is planting approximately 82 acres of new forest in areas that are currently unforested. While some minor encroachments are proposed within the environmental buffers during construction to allow for safe conveyance for stormwater outfalls and grade tie-outs, these encroachments are within currently unforested portions of the buffers and the grade tie-out areas will be reforested.

Property Recommendations West of I-270 & Throughout Ten Mile Creek (Master Plan, p. 18-21)

The Master Plan includes several recommendations for properties located west of I-270. Below is a list of these recommendations with discussion on how they are met.

- *Reduce the development footprint and impervious cover, emphasizing reduced impacts to upland forested areas and steep slopes. In particular, protect existing stream conditions in the high-quality headwater subwatersheds LSTM 110 (King Spring) and LSTM 111.*

The development footprint is located along the upland ridge between the tributary streams of Ten Mile Creek identified in the Master Plan as LSTM 110 to the north and LSTM 111 to the south. The environmental buffers are a minimum of 200-feet from these streams and their tributaries, as well as from all springs and seeps, and have been expanded to include adjacent ≥ 15 percent slopes, erodible soils, wetlands and their buffers and ephemeral streams and their buffers. The majority of the steep slopes have been protected within the environmental buffers. There is significant topography on this Property and there are some areas of slopes between 15 and 25 percent that are impacted by the development; however, these slopes are not hydraulically connected to streams and are adjacent and downslope from the highest elevations on the Property. The Application includes a total of 0.66 acres of forest clearing; however, 0.55 acres of the clearing is in the vicinity of the historic Cephas Summers House to allow for the anticipated removal and rebuilding of this structure and for a temporary access to allow for balancing dirt during construction. The need for this access will be reevaluated during the review of the Final Forest Conservation Plan. The remainder of the forest clearing calculations includes 0.01 acres located within the access easement for the off-site, landlocked Delaney property that will not actually be cleared but will not be protected in a conservation easement, and 0.10 acres for two storm drain outfalls

to allow for safe conveyance to the receiving stream. The Forest Conservation Plan shows a limit of disturbance for the stream restoration work to provide access to these areas; however, no forest removal is anticipated. All of the existing unforested environmental buffers will be reforested as part of this Application and impervious surfaces will not exceed six percent, providing additional water quality benefits to the watersheds. Overall, the Application is in substantial conformance with the Master Plan's recommendation to minimize impacts to steep slopes and forest and protect existing stream conditions.

- *Limit imperviousness to six percent of new development on properties recommended for the RNC zone.*

The Application is subject to the Clarksburg West Environmental Overlay Zone, which limits impervious surfaces for the Application to a maximum of six percent. The Application includes an Impervious Surface Exhibit, which demonstrates compliance with this limit. In addition to the proposed development, the impervious surface calculations include anticipated future impervious surfaces for the 10-acre neighborhood park and for the reconstruction of the Historic Cephas Summers House and the associated driveway.

- *No additional impervious cover is recommended for the County-owned properties, except that the impervious surface overlay zone may be amended in the future to allow for a less than one acre expansion of the Correctional Facility.*

This Property is not County-owned and therefore this section does not apply.

- *Require development of the Pulte/King properties to include a conservation management plan for areas outside the limits of disturbance that are not either dedicated to M-NCPPC for parkland or placed in a rural open space easement, if such areas are included in a development plan. This Plan should be coordinated with the Planning Department and Department of Parks to address management of natural resources, preservation of pervious land cover, and compatibility with all adjacent land uses (both parks and development area). This conservation management plan must be approved as part of the preliminary plan or site plan for the site.*

The Application includes a preliminary Conservation Management Plan (CMP) for approximately +/-62 acres of the Property located outside of the limits of disturbance that are not part of the park conveyance or rural open space easement. The Conservation Management Plan includes areas that will be planted in meadow with a native pollinator meadow mix as well as some mowed areas planted with native trees and shrubs. These areas are designed to provide a natural transition between the development and the forested areas. As conditioned, the final Conservation Management Plan will be submitted during site plan for review and approval by the Planning Board with recommendations by the Department of Parks, Planning, and DEP to meet this specific requirement.

- *Environmental buffers must be consistent with all regulations and guidelines. In addition, in all areas in Ten Mile Creek other than the Historic District, on both sides of perennial and intermittent streams, and adjacent to springs and seeps, buffers must be a minimum of 200 feet, and must be expanded to include: All erodible soils (listed in the Planning Board's Environmental Guidelines for Development, as amended); Wetlands that extend beyond the buffer must have a minimum 50-foot wetland buffer; All ephemeral streams, not including roadside drainage ditches, plus a 50-foot buffer; All slopes 15 percent or greater that begin within the buffers described above.*

Planning Staff approved Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 420190250 on September 10, 2019. The NRI/FSD identified all of these required features and conforms to these recommendations. The approved environmental buffers are identified on the Preliminary Forest Conservation Plan submitted as part of this Application.

- *Amend the Clarksburg Special Protection Area to include an additional area east of I-270.*

The limits of the Clarksburg Special Protection Area were amended, and the Ten Mile Creek Special Protection Area was created in response to this recommendation. The Subject Property is within the portion of the Ten Mile Creek Special Protection Area located west of I-270.

- *Establish environmental overlay zones to apply the Plan's limits on imperviousness for new development and reduce development footprints to protect sensitive resources.*

The Clarksburg East and Clarksburg West Environmental Overlay Zones were created in response to this recommendation. The Overlay Zones incorporate limits on imperviousness and open space requirements. The Subject Property is within the Clarksburg West Environmental Overlay Zone that limits imperviousness to a maximum of six percent and has an 80 percent rural open space requirement.

- *Minimize disturbance of natural resources throughout the Ten Mile Creek Watershed, especially forests in the headwater areas. Forest Conservation Plans for properties in the Ten Mile Creek Watershed should protect: All forest required by the Forest Conservation Law and Regulations (includes environmental buffers as previously described and minimum retention requirements), as well as areas defined in this Master Plan; All interior forest (as defined by the Maryland Department of Natural Resources); On the Miles-Coppola properties, the forest bounded by the two northernmost environmental buffer areas on the north and south, I-270 on the west, and the existing agricultural fields on the east; On the Pulte/King properties, all forest adjacent to environmental buffers; All forest on County-owned properties.*

The Preliminary Forest Conservation Plan demonstrates conformance with the forest conservation law and regulations, protects interior forest, and forest adjacent to environmental buffers. The Application protects approximately 254 acres of existing and planted forest through dedication to M-NCPPC Parks or conservation easements.

- *Explore ways to create incentives for additional voluntary forest planting (using forest banks or other strategies) on rural or RDT-zoned properties in the Ten Mile Creek Watershed to help reach a watershed goal of 65 percent forest cover.*
Development on the Subject Property will be clustered away from the stream valley areas, protecting over 172 acres of existing forest resources, and the Applicant is planting approximately 82 acres of new forest in areas that are currently unforested and therefore assists with achieving a watershed goal of 65 percent forest cover.

Water Quality Strategies & Additional Principles/Strategies

The Master Plan also includes several water quality strategies and principles listed below.

- *Avoiding overflow discharges onto steep slopes. Ensuring that any overflow occurs as sheet flow to the floodplain and/or receiving streams. Managing discharges from stormwater outfalls using step-pool storm drainage conveyance systems or comparable designs, as appropriate. Minimizing environmental buffer impacts associated with ESD overflow outfalls. Minimizing the need to convey stormwater across steep slopes and forested areas, and ensuring such conveyance is done in a nonerosive manner. Minimize disturbance of natural resources throughout the Ten Mile Creek Watershed, especially forest cover in the headwater areas. Minimize direct impacts associated with new infrastructure, such as the MD 355 bypass and the sanitary sewer extension on natural resources. Minimize grading the thin and rocky soils in Ten Mile Creek, which helps sustain groundwater flows to the many springs and seeps. Indicate the importance of limiting grading and soil compaction as much as possible through creative site design and development staging. New development must employ planning and zoning options and design techniques that minimize impervious cover, including: Cluster development with smaller building footprints on smaller lots with shorter driveways; Place houses near the front of a building envelope to reduce driveway length, and provide shared driveways, where feasible; Design narrower streets with limited sidewalks; Use vegetated swales to guide runoff toward ESD facilities or pervious areas instead of curbs and gutters on secondary streets unless they conflict with other requirements; Limit impervious cover for cul-de-sacs by reducing curve radii and having a green space in the turn-around area; Preserve land with a high infiltration capacity to be used for storm water infiltration or natural recharge area. Maintain natural drainage patterns, especially around zero order streams by: Preserving and designing around ephemeral streams within the limits of disturbance, as much as possible;*

Maintaining existing natural topography and vegetation within ephemeral streams; De-compacting and amending soils within the limits of disturbance with organic matter to a greater depth than currently required (this measure would be determined by the Department of Permitting Services as part of development plan and approvals. Environmental Site Design (ESD) – As a first step, apply appropriate ESD site planning techniques within proposed development areas to maximize environmental benefits; Site planning and design must be guided by and integrated with the selection and appropriate location of ESD practices to achieve the greatest watershed benefits based on an evaluation of specific site and subwatershed considerations; To the extent feasible, ESD practices should minimize the concentration of flows through sheet flow and dispersion and must ensure any such conveyance is done in a non-erosive manner. Require restoration of streams and wetlands adversely affected by existing uses after all development is completed in the drainage area so as to allow the hydrology to adjust to the new landscape.

In general, the Application addresses the Master Plan recommendations listed above. The majority of these items related to sediment control and stormwater management will be reviewed by MCDPS as part of the Final Water Quality Plan, and for the disturbed areas and storm drain/ESD outfalls, during MCDPS' detailed plan review stage for the sediment control and stormwater management plans. Staff from MCDPS Water Resources has confirmed that this Application is effectively maintaining existing draining areas, with only relatively small areas being directed away from their existing drainage course. This is a standard requirement of all SPA water quality plans. Although the State no longer requires limiting the grading units to a 20-acre maximum, MCDPS continues to require that sediment control plans adhere to these restrictions. Therefore, this Application will be required to be phased so that only 20 acres (a grading unit) at a time will be actively disturbed. When this grading unit is 50 percent complete and stabilized, the next grading unit can be opened. This will limit active grading to no more than 30 acres at one time.

The Master Plan references requirements for de-compaction and soil amendments. Although the Master Plan language is vague on specifics, MCDPS finds that in order to comply with the intent of the Master Plan recommendation, the Planning Board require that the Applicant follow the Maryland Department of the Environment (MDE) requirements for soil preparation, topsoiling and soil amendments, but provide soil loosening and fertilizing to 6-8 inches and a minimum of an eight-inch layer of topsoil for any graded areas of 1,000 square feet or more that will be vegetated with grass. These requirements exceed the MDE standards which require 3-5 inches of soil loosening and 5-8 inches of topsoil for graded areas greater than five acres. This increased soil amendment strategy will serve to maintain the infiltration capabilities of the soil, promote more vibrant plant growth, and reduce runoff.

The Application includes a Preliminary Stream and Wetland Restoration Plan that identifies approximately 1,000 linear feet of stream sections that have been adversely affected by the past agricultural uses that occurred on the Property. A Final Stream and Wetland Restoration Plan will be reviewed by Staff from the M-NPCC Planning Department and Department of Parks, and MCDEP as part of the Site Plan application.

The development has also been designed to cluster development in unforested areas and protect the environment and reduce impervious area. The development uses individual grinder pumps, and the force main sewer system will provide service without the need to be located near Ten Mile Creek or cross its tributaries while providing uninterrupted natural views from Clarksburg road by not placing housing units directly along the roadway frontage. The development also places single-family detached units near the front of the building envelope to reduce the driveway length to 18-feet to further reduce imperviousness as a strategy to improve water quality as recommended by the Master Plan.

Historic Cephas Summers House Property, (Master Plan, p. 42)

The Cephas Summers House is a locally-designated historic resource located on Parcel 900 along Old Clarksburg Road. The current environmental setting includes the whole entire 66.4-acre parcel that may be reduced to approximately five acres as part of the development per the Master Plan recommendations. The Master Plan also recommends that the house should be restored and become part of the adjacent development. As conditioned, the Historic Cephas House will be rehabilitated in its original location as recommended by the Historic Preservation Commission (HPC). The environmental setting will also be reduced from 66.4 acres to 10.21 acres which is supported by HPC and consistent with the Master Plan. Therefore, the Application conforms to the Master Plan recommendation for the Historic Cephas Summers House.

Rural Open Space Requirements and Design Guidelines, (Master Plan, p. p.42-44)

The Master Plan also provides a number of Rural Open Space Design Guidelines listed below for development located West of I-270 which includes the Subject Property. The Application does comply with this portion of the Master Plan as described below.

- *Include all land meeting the Environmental Buffer requirements, as well as forest protection, listed on page 19;*
As discussed above, the Application meets the environmental buffer requirements as well as forest protection.

- *The neighborhood park recommended for this portion of the watershed maybe wholly or partially within the rural open space; Dedicate most of the rural open space as parkland.*

The Application is consistent with this recommendation since the 10-acre neighborhood park is located within the rural open space and a total of 87 percent of rural open space will be conveyed as parkland.

- *Concentrate cluster development in unforested upland areas; wooded stream valleys should be left intact, undeveloped, and in their natural states as rural open space;*

The development is clustered generally in the northeastern portion of the Property and located away from existing forest. Wooded stream valleys are also left intact, undeveloped and in their natural states and designated as rural open space areas.

- *Reduce environmental impacts and imperviousness during development by applying ESD techniques;*

The Application applies several environmental site design techniques as described above. The overall site layout has been designed to substantially maintain existing drainage divides. The Preliminary Water Quality Plan also meets requirements of the Master Plan by instituting the highest standards of protection for development areas, avoiding overflow discharges onto steep slopes, managing discharges from stormwater outfalls, and minimizing environmental buffer impacts associated with ESD overflow outfalls.

- *Require a conservation management plan for areas outside the limits of disturbance that are not dedicated to M-NCPPC for parkland or placed in a rural open space easement, if such areas are located in a development plan. The conservation management plan should be coordinated with the Planning Department, the Department of Parks, and the Department of Environmental Protection to address management of natural resources, preservation of pervious land cover, and compatibility with adjacent land uses (both Parks and development area). This conservation management plan must be approved as part of the preliminary plan for the site.*

As discussed above, the Application includes a preliminary Conservation Management Plan. The Master Plan provides guidance that requires Staff to review and make recommendations on the Conservation Management Plan during the review of the preliminary plan or site plan (Master Plan, p. 19). As conditioned, the Final Conservation Management Plan will be submitted as part of the Site Plan for approval by the Planning Board in coordination with the Department of Parks, Planning, and DEP.

- *Direct new sewers away from Ten Mile Creek, utilizing proposed and existing roads; pump stations may be required to make connections to sewer lines in Cabin Branch;*
Sewers will be directed away from the Ten Mile Creek since the residential development has been designed using individual grinder pumps and the force main sewer system will provide service without the need to be located near Ten Mile Creek or cross its tributaries.

- *Size and locate lots to preserve rural views from Clarksburg Road and ensure an environmental setting of five acres for the historic Cephassummers house. Include restoration of the Cephassummers House in a development plan;*
The development footprint will provide uninterrupted natural views from Clarksburg Road by not placing housing units directly along the roadway frontage, by screening the units placed in closest proximity with both the use of berms and natural landscaping. Further, development is not located along the south side of the main primary street entrance for expansive views into the adjacent stream valley, and by reserving the road frontage south of the Cephassummers House for the natural resource-based neighborhood park;

- *Incorporate open space into the clustered community to provide residents with recreational opportunities;*
The residential development has been designed to provide integrated open space within the development footprint to compliment the significant open space provided to the exterior of the clustered development. In addition to 80 percent rural open space, the development provides 6.8 percent open space for amenities and recreational uses. Pocket parks and eight trailheads to natural surface trails are also provided throughout the development to maximize open space with recreational opportunities for the residents. Several trailheads are located between single-family detached units that lead to the natural surface trails. To improve public access to the trailheads and improve views to the natural resources on the Property, the Planning Board has conditioned the Application to provide a minimum of forty (40) feet between single-family detached units in these key areas. Widening these areas also allows for larger meaningful entrances to the open space and minimizes privatization of the space. The development will also include amenities such as a clubhouse, pool, open lawn area and a multi-purpose court located generally at the center of the development.

- *Provide access from public roads within a development to the proposed Ten Mile Creek Conservation Park to facilitate the creation of trailheads for natural surface trails and allow park maintenance access.*
The natural resource-based park is located directly along Clarksburg Road and therefore will have direct access from a public road.

Legacy Open Space, (Master Plan, p. 48)

Montgomery County preserves its most significant undeveloped open space through its Legacy Open Space program. The 2001 Legacy Open Space Functional Master Plan identifies natural resources, open space, farmland, and historic places that can be conserved through a variety of protection tools, including easements, protection through the regulatory process and, when appropriate, acquisition. The Master Plan includes the Special Protection Area of the Ten Mile Creek Watershed as a Natural Resource site that meets Legacy Open Space criteria.

- *Designate the high quality, critical forest and open habitats that protect the quality of the Ten Mile Creek headwaters as a Legacy Open Space Natural Resource site (Class II). Approximately 1,230 acres are proposed for designation (see Map 11).*

The Application will convey +/-280.8 acres of high quality, critical forest and meadow habitat to the Department of Parks and protects additional areas as part of a Conservation Management Plan. During the review of the Application, Planning Staff requested an additional area totaling 0.67 acres to be conveyed to M-NCPPC Parks. As conditioned, all applicable sheets will be revised during the Certification of the Preliminary Plan to include an additional 0.67 acres for parkland for a total of +/-280.8 acres.

- *Protect the designated Natural Resource on an individual property basis using a variety of tools, which may include easements, dedication through the development review process, and fee simple acquisition.*

The protection techniques, including conveyance of environmental resources to Parks through Legacy Open Space and Park dedication are being used and protect critical resources associated with the development.

- *To create the core of the Ten Mile Creek Conservation Park, dedicate the Rural Open Space outside of the development envelope on the Pulte and King properties to the Department of Parks as a condition of the development review process. Land unavailable through dedication during the development review process may be acquired by the Department of Parks.*

The residential development provides a core area for the Ten Mile Creek Stream Valley Park/Conservation Park – a critical platform for habitat, water quality and resource-based recreation.

Parks and Trails, (Master Plan, p. 48-51)

The 1994 Clarksburg Master Plan created a park and open space system that designated general locations for new local parks serving Clarksburg's developing neighborhoods. Importantly, the 1994 Master Plan also made provisions for connections between these local parks and the greenway network as prominent components of its overall vision. However, since park planners did not anticipate the significant development west of I-270 that was ultimately approved as part of the

1994 Plan, no local park was included in the Ten Mile Creek Watershed. The Master Plan now calls for the following:

- *Provide a countywide natural surface trail, designed to M-NCPPC Montgomery Parks standards, in the Ten Mile Creek area linking Little Bennett Regional Park and Black Hill Regional Park per the Countywide Park Trails Plan (2008) and the 1994 Clarksburg Master Plan.*

The Application provides a major portion of area to facilitate this countywide natural surface trail connection and therefore complies with this portion of the Master Plan.

- *Provide five trailheads, designed to M-NCPPC Montgomery Park standards, to access the Ten Mile Creek natural surface trail and nearby natural areas for park users and operations staff.*

These trail connections are provided to the satisfaction of the Department of Parks. The proposal includes eight trailheads which is above the five trailheads recommended by the Master Plan that will be designed to the M-NCPPC Montgomery Parks standards for access to the Ten Mile Creek natural surface trail and nearby natural areas for park users and operations staff.

- *Provide a new natural resource-based Neighborhood Park of at least 10 developable acres for close-to-home recreation for the Ten Mile Creek area, designed to M-NCPPC Montgomery Parks standards. The park, located outside of environmentally sensitive areas, is recommended as a platform for walkable, close-to-home facilities and to serve as a trailhead for the Ten Mile Creek natural surface trail. The park should have a natural resource theme and should be located adjacent to conservation parkland. The proposed Preliminary Program of Requirements for the Neighborhood Park is as follows: Access to the Conservation Park for trail users and operations, maintenance and police functions from the planned development; A trailhead with a small gravel parking area (6-8 spaces), with access through adjacent development; Picnic area; Natural play area; Community garden; Community open space large enough for community festivals and pickup sports, of at least 15,000 square feet; Adequate space to provide for Environmental Site Design, Stormwater Management, Forest Conservation, and other regulatory requirements. Ensure that public infrastructure planning for Clarksburg is fully coordinated with planning and implementation efforts for Clarksburg Triangle Civic Green.*

The Application does comply with this recommendation of the Master Plan. A 10-acre area of the Property has been reserved for this purpose. The Planning Board supports the location of the neighborhood park along Clarksburg Road, south of the Cephas Summers House property. The Application also allocates adequate impervious area to achieve the future improvements listed above as

recommended by the Master Plan. As conditioned, the natural surface trail will include a connection to the park from the development.

Noise

The Application did not include a Noise Analysis as requested by Planning Staff to demonstrate conformance with the *1983 Staff Guidelines For the Consideration of Transportation Noise Impacts In Land Use Planning and Development* ("Noise Guidelines"). Instead, the Applicant submitted a letter with their rationale as to why a Noise Analysis was not required. The Applicant's letter references language in the 1983 Noise Guidelines which notes that recommendations in subsequent master or sector plans supersede the noise threshold guidance in the Noise Guidelines and that Figure 47 on page 153 of the 1994 Plan indicates that the Property is outside of the area that warrants a Noise Analysis. Further, the Applicant claims that a Noise Analysis was not required for the Cabin Branch subdivision, which is located on the other side of MD 121 from this development and includes homes that are closer to MD 121 than those proposed by this Application, and therefore, this Application should not require a Noise Analysis.

As conditioned, the Planning Board is requiring a Noise Analysis be provided by the Applicant prior to certification of the Preliminary Plan or submitted with the Site Plan, whichever comes first. The Noise Analysis is necessary to determine the projected interior and exterior noise levels for the residences. This Property meets the screening criteria on page 6 of the Noise Guidelines, which warrants a Noise Analysis. The screening criteria is met because the Property is within 300 feet of an arterial road (MD 121, Clarksburg Road) with Average Daily Traffic of 5,000 to 20,000. Per County Council Resolution No. 16-1306, adopted April 20, 2010 (page 13), the County Highway Noise Abatement Policy "*encourages the Planning Board to observe strict adherence to the staff guidelines during the subdivision development approval process...*"

While the Planning Board concurs with the Applicant that the 1994 *Clarksburg Master Plan* supersedes the Noise Guidelines, Figure 47 of the 1994 Master Plan differs from the Noise Guidelines map by extending the 65 dBA threshold further north along I-270 and expanding the 60 dBA threshold further out to the east and west. The location of the Creekside at Cabin Branch Property remains within the 55 dBA threshold. While the Subject Property lies within the noise threshold of 55 dBA, Table 2-1 on page 8 of the Noise Guidelines notes that 55 dBA is suggested in permanent rural areas where residential zoning is for five or more acres per dwelling unit. Based on this, 60 dBA is more appropriate and is the guideline in areas where suburban densities predominate. With a waiver request, the Planning Board will consider an exterior noise threshold of 60 dBA and based on the Noise Guidelines, an interior threshold of 45 dBA. If the analysis identifies these thresholds to be exceeded, appropriate mitigation measures will be required to be incorporated into the Site Plan.

In regard to the Noise Analysis for the Cabin Branch subdivision, the original Site Plan for Cabin Branch was approved in 2005 and it was for the proposed roads and infrastructure and did not include any residential homes, so a Noise Analysis was not required at that time. Subsequently, each section of the development has had its own Site Plan. The Site Plans submitted that included residences along MD 121 did not require a Noise Analysis because the traffic counts along MD 121 at the time of application were not high enough to meet the noise analysis threshold. Other Site Plans for the development included commercial development and development that was adequately buffered by the Clarksburg Premium Outlets.

Transportation, (Master Plan, p. 24-30)

The Subject Property is accessed from Clarksburg Road. This state road was recently reconstructed along much of the property frontage as part of a larger reconstruction project throughout this section of western Clarksburg, with the Plan reflecting this new alignment and cross section. The proposed roadway network within the Subject Property is comprised of public streets and private alleys that create a semi-regular grid within the development area.

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

Other than the Schools Test, the full Preliminary Plan build-out (326 units) satisfies the Adequate Public Facilities review as explained below.

Roads and Transportation Facilities

The vehicle and pedestrian access to the Subject Property will be adequate to support and service the area for the type and size of development proposed. The Subject Property has frontage on two public roads – Clarksburg Road and Old West Baltimore Road. However, vehicular access for all new approved development will come from one new entrance to Clarksburg Road.

Master Planned Improvements

As identified in the 2018 Master Plan of Highways and Transitways, Clarksburg Road. (MD 121) is an Arterial road with a recommended right-of-way width of 80 feet and two travel lanes. West Old Baltimore Road is identified as an Exceptional Rustic Road with a recommended right-of-way width of 80 feet. As conditioned, the Preliminary Plan provides necessary dedication to provide a minimum of 40 feet from centerline across the entire Property frontage. All proposed right-of-way for Clarksburg Road is in excess of the 80-foot recommendation, and ranges beyond 100 feet surrounding intersections. Additional right-of-way dedication is conditioned for West Old Baltimore Road to support long term preservation of roadside features for this road identified as having exceptional rustic character. However, no access will be provided along West Old Baltimore Road and all new development on the Subject Property will occur approximately ½ mile to the north. The Rustic Roads Advisory

Committee has expressed support for the Application in a letter dated May 6, 2020 as there will be no impact or access to West Old Baltimore Road.

The 2018 *Bicycle Master Plan* recommends a minimum 6-foot-wide bike lane on the west side of Clarksburg Road along the northern third of the frontage on Clarksburg Road. This bike lane is currently in place following reconstruction of the road; however, the lane will be partially reconstructed across the site entrance in light of the redesign of that intersection. The bike lane will transition into bikeable shoulders south of the site entrance (south of Creekside Boulevard). On the east side of Clarksburg Road, a shared use path is recommended and is under construction as part of the Cabin Branch development.

Subdivision Streets

The Application is providing a network of public streets, with a handful of private alleys to accommodate direct access to townhome units. Most of the new streets are being designed in accordance with MCDOT's Secondary Residential Street cross-section standard MC-2002.02, which is a 60-foot-wide right-of-way for two lanes of traffic, parking on one side, curb and gutter, and sidewalks on both sides.

An exception to the secondary street standard is proposed Creekside Boulevard east of Pika Court, the main spine for the Subject Property, which is to be constructed as a Primary Residential street with a 70-foot ROW. Private alleys in portions of the Subject Property supporting rear-loaded townhomes will be constructed with 20 feet of pavement on 25-foot-wide parcels to be maintained by the HOA and governed by a standard covenant for private roads. As detailed previously, waiver requests are proposed to accommodate the use of a tertiary standard centerline curve radius for the public street identified as Lindsay Drive, use of curbs and gutters, and for a non-through road exceeding 500 feet in length. As discussed above, the Planning Board approved these waivers and with the support of MCDOT.

Driveways

The Application provides 20-foot-deep driveways as measured from the ROW line to the garage façade for all front-loaded townhouse units. For the front-loaded single-family detached units, the Application provides 18-foot-deep driveways as measured from the ROW line to the garage façade. The MCDOT's memo finds that the length of driveways be modified for single-family detached front-loaded units to be a minimum of 20-feet long as measured from the ROW line to the garage façade. This is intended to ensure that parked vehicles do not overlap or block sidewalks, or otherwise impede maintenance of public facilities in the ROW. The Planning Board supports the Applicant's proposal in light of Master Plan recommendations to limit driveways length and overall impervious surfaces. The 18-foot length driveway will be able to accommodate the vast majority of parked vehicles. That dimension is consistent with the 18-foot standard depth for a parking space in the Zoning

Ordinance. Therefore, as conditioned, The Planning Board accepts all conditions referenced in MCDOT's memo except for condition no. 8.

Local Area Transportation Review ("LATR")

The Application for 325 new residential dwelling units (208 townhouses and 117 single-family detached) and one existing single-family detached unit are predicted to generate 287 and 349 net new person trips during the AM and PM peak-hours respectively. As the Application generates more than 50 peak-hour person trips, a full traffic study was required to satisfy the LATR guidelines.

The Traffic Study was submitted on September 26, 2019 and revised January 23, 2020. Three existing intersections with Clarksburg Road were studied at Broadway Avenue, Dowitcher Way/Site Access, and West Old Baltimore Road determine whether they met LATR congestion standards.

All intersections are located in the Clarksburg Policy Area, which has a Critical Lane Volume ("CLV") standard of 1,425 and an HCM standard of 51 seconds of delay. The intersection of Clarksburg Road and West Old Baltimore Road is a traffic circle, for which CLV analysis is unsuitable; therefore, delay was measured via the HCM methodology. All three intersections operate below congestion standards and no improvements are necessary. A signal warrant analysis was conducted for the proposed Clarksburg Road and Dowitcher Way/Site Entrance intersection for Warrants 1, 2, and 3. Although no warrant is satisfied, volumes are large enough that the Applicant has been conditioned to perform an updated signal warrant analysis following the construction of approximately 2/3 of the approved development. Should warrants be met at this time, the Applicant has been conditioned to construct a signal at this intersection. Additionally, as conditioned, the Applicant is required to construct all necessary conduit in support of signalization as part of the construction of the site entrance.

School Capacity

The Application was reviewed for school adequacy and the Property is located within the Clarksburg High School cluster and is within the attendance area for Clarksburg Elementary and Rocky Hill Middle Schools. The following analysis evaluates at the school capacity within each of these schools and the Applications impacts to the school's enrollment.

Overview and Applicable School Test

The Creekside at Cabin Branch Preliminary Plan is scheduled to come before the Planning Board for review FY21. Therefore, the FY21 Annual School Test, approved by the Planning Board on June 25, 2020 and effective July 1, 2020 is applicable.

Phase 1 of the Application proposes development of 187 new units, consisting of 60 single-family detached and 127 townhouse units.

Calculation of Student Generation

To calculate the number of students generated by the development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached, low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the Upcounty Region of the County.

Per Unit Student Generation Rates – Upcounty Region

	Elementary School	Middle School	High School
SF Detached	0.210	0.120	0.169
SF Attached	0.248	0.121	0.157
MF Low-Rise	0.183	0.077	0.093
MF High-Rise	0.020	0.008	0.010

With a net of 187 units (60 single-family detached units and 127 townhouse units), the proposed project is estimated to generate the following number of students:

Unit Student Generation Rates – Upcounty

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
Single Family Detached	60	0.210	12.600	0.120	7.200	0.169	10.140
Single Family Attached	127	0.248	31.496	0.121	15.367	0.157	19.939
TOTALS	187		44		22		30

On average, the Application is estimated to generate 44 new elementary school students, 22 new middle school students, and 30 new high school students.

Cluster Adequacy Test

The Application is located in the Clarksburg High School Cluster. The student enrollment and capacity projections from the FY21 Annual School Test for the cluster are noted in the following table:

Student Enrollment & Capacity Projections by School Level

School Level	Projected Cluster Totals, September 2025			Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization		
Elementary	3,857	4,056	95.1%	1,011	44
Middle	1,629	1,668	97.7%	373	22
High	2,410	2,034	118.5%	31	30

The Moratorium Threshold identified in the table is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. As indicated in the last row, the estimated enrollment impacts of this application fall below the moratorium threshold at the high school level. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by Phase 1 of this project.

Individual School Adequacy Test

The applicable elementary and middle schools for this project are Clarksburg ES and Rocky Hill MS, respectively. Based on the FY21 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

Student Enrollment & Capacity Projections by School

School	Projected School Totals, September 2025				Moratorium Threshold	Estimated Application Impact
	Enrollment	Program Capacity	% Utilization	Surplus/Deficit		
Clarksburg ES ²	268	311	86.2%	+43	153	44
Rocky Hill MS	1,035	1,020	101.5%	-15	190	22

² The projected Clarksburg ES enrollment has been modified to estimate the impact of redistricting students to Clarksburg ES #9 in September 2023.

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds both thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the numbers of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and the seat deficit threshold. As indicated in the last column, the estimated enrollment impacts of Phase 1 of this Application fall below the moratorium thresholds for both Clarksburg ES and Rocky Hill MS. Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of elementary and middle school students generated by Phase 1 of this project.

Analysis Conclusion

Based on the school cluster and individual school capacity analysis performed, using the FY2021 Annual School Test, there is adequate school capacity for the amount and type of development by Phase 1 of this Application for 187 dwelling units (60 single-family detached and 127 townhouses) out of the requested 326 units. The Applicant will request approval of the additional units once school capacity becomes available.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the full density of the development. The Subject Property is served by public water and sewer systems and is currently in service categories W-3 and S-3, respectively. This Application has been reviewed by the Montgomery County Department of Permitting Services Fire Department Access and Water Supply Group, which has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

4. *all Forest Conservation Law, Chapter 22A requirements are satisfied;*

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

Environmental Guidelines and Limited Amendment Master Plan

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420190250 for this Property was approved on September 10, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Limited Amendment outlines additional requirements for the protection of environmental resources beyond what is outlined in the *Environmental Guidelines, Guidelines for Environmental Management of Development in Montgomery County* (“Environmental Guidelines”). The guidance in the Limited Amendment requires a minimum of 200-foot buffers for all intermittent and perennial streams, springs and seeps and expansion of these buffers to include ephemeral streams and their 50-foot buffers, wetlands with a minimum 50-foot buffer, which may be larger based on the SPA wetland buffer guidance in the Environmental Guidelines, erodible soils as defined in the Environmental Guidelines, and ≥ 15 percent slopes that begin within the buffers. The NRI/FSD for this Property was prepared, reviewed, and approved using the guidance outlined in the Environmental Guidelines, and where necessary, superseded by the guidance outlined in the Limited Amendment.

The Property is a mix of forest and agricultural fields including approximately 173 acres of existing forest, 11 acres of wetlands, and 209 acres of environmental buffer. There is an existing farmhouse and accessory structures on the Property as well as the historic Cephas Summers House and associated accessory structures. The Property is within the Seneca Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters, within the Ten Mile Creek Special Protection Area, and the Clarksburg West Environmental Overlay Zone. Ten Mile Creek originates just north of MD 355 and flows into Little Seneca Lake, which then flows into the Potomac River via Seneca Creek. There are three main tributaries of Ten Mile Creek that flow through the Property in a westerly direction. These tributaries are identified in the Limited Amendment as LSTM 110, LSTM 111, and LSTM 112. The Limited Amendment notes that LSTM 110 (King Spring Tributary) is considered one of the highest quality streams in Montgomery County (Limited Amendment page 14). Slopes in excess of 15 percent, including slopes ≥ 25 percent and highly erodible soils as listed in the Environmental Guidelines have been identified on the Property. There are no FEMA mapped floodplains on or immediately adjacent to the Property, but there is an M-NCPPC mapped floodplain that has been incorporated into the environmental buffer. Seeps, springs, and ephemeral streams were identified and included within the Master Plan recommended environmental buffer. The NRI/FSD also identified numerous significant and specimen trees.

The Application proposes some areas of minor encroachments into the environmental buffer, requiring approximately 0.10 acres of forest clearing. The unavoidable forest clearing within the buffer is for the construction of two storm drain outfalls which are necessary to provide safe conveyance of stormwater discharges at non-erosive velocities. The Environmental Guidelines (p. 18) allow for

“minimized buffer intrusions for construction of non-erosive storm drain outfalls”. Additional storm drain outfalls will encroach into unforested portions of the environmental buffer for similar reasons. In addition, the Application includes areas of temporary encroachment into unforested portions of the environmental buffer during construction to allow an access road to facilitate the earthwork balancing on site and grade tie-outs, which has resulted in the elimination and minimization of retaining walls. These currently unforested areas will be stabilized and reforested per the details on the Forest Conservation Plan. The Application also includes a limit of disturbance within the environmental buffer to provide access to and accomplish the stream restoration work recommended in the Limited Amendment to the Master Plan. The limits of disturbance for the stream restoration work will be finalized on the Final Forest Conservation submitted with the Site Plan, and the Applicant does not anticipate the removal of any trees for this work. The only permanent encroachments in the environmental buffer are for the storm drain outfalls. All other areas will be reforested and protected either through conveyance to the M-NCPPC Department of Parks or through a Category I conservation easement. The Application proposes to reforest the entire environmental buffer, restore sections of stream channel that have been adversely affected by the past land use as illustrated on the Stream and Wetland Restoration Plan, and implement a Conservation Management Plan for other areas of the Property. The environmental benefits will mitigate the effects of the stream valley buffer encroachments.

Additional Limited Amendment to the Master Plan Environmental Requirements

- **Stream and Wetland Restoration Plan**
The Limited Amendment to the Master Plan requires properties to restore streams and wetlands adversely affected by the previous land uses as part of the SPA Water Quality Plan requirements. The Application includes a Preliminary Stream and Wetland Restoration Plan, and a final version of the plan will be reviewed as part of the Site Plan application.
- **Conservation Management Plan (CMP)**
The Limited Amendment to the Master Plan requires the Pulte Property to include a Conservation Management Plan (CMP) as part of the Preliminary Plan Application (Master Plan, p. 19). This plan must be reviewed and approved by Staff from the M-NCPPC Department of Parks and Planning Department and from the Montgomery County Department of Environmental Protection (MCDEP) as part of the preliminary plan or site plan. The CMP must *“address the management of natural resources, preservation of pervious land cover, and compatibility with adjacent land uses (both parks and the development area).”* The CMP must include the land outside of the limits of disturbance that is not proposed as parkland or to be included in the rural open space easement. The Applicant provided a preliminary CMP for +/-62 acres of the Property that will preserve pervious land cover through the creation of meadows planted with a mix of native vegetation favored by

pollinator species and grassed areas planted with individual native trees and shrubs. The preliminary CMP was submitted with the Preliminary Plan Application and reviewed in coordination with Staff from the Department of Parks and MCDEP. These vegetated areas will provide a natural transition between the residential development and the forested stream valleys. The final review of this plan, including the determination of maintenance requirements and responsibilities will be addressed with the Site Plan application for the Property.

As conditioned in this Staff Report, the Application is in conformance with the Montgomery County Planning Department's Environmental Guidelines and the Limited Amendment Master Plan environmental recommendations.

Forest Conservation

As required by the Forest Conservation Law, a Preliminary Forest Conservation Plan (FCP) for the Property was submitted with the Preliminary Plan. The tract area for forest conservation purposes includes the 402.62-acre Property plus 1.74 acres of off-site disturbance for a total net tract area of 404.36 acres.

The Property contains approximately 172.74 acres of existing forest. The FCP proposes to remove 0.66 acres and retain 172.08 acres of forest. This does not generate a forest planting requirement as illustrated in the forest conservation worksheet on Sheet 1 of the FCP.

The 0.66 acres of forest removal includes 0.10 acres of clearing for the installation of stormwater management outfalls, 0.55 acres of forest clearing for the demolition and reconstruction of the historic Cephass Summers House and the installation of an access road to facilitate earthwork balancing during construction, and 0.01 acres of forest counted as cleared because it is located within the access easement for the landlocked Delaney property. Since this forest cannot be protected in conservation easement, it is counted as cleared for forest conservation purposes. As final plans for the Cephass Summers House are determined and alternatives for the earthwork access road are evaluated, the forest clearing calculations will be refined and minimized where possible and updated on the Final Forest Conservation submitted as part of the Site Plan application.

The 172.08 acres of forest retention includes the existing forest adjacent to the environmental buffers as required for this Property by the Master Plan (Master Plan, p. 19). The Preliminary Plan is subject to Section 22A-12(f) of the Forest Conservation Law, which requires any development in a cluster or other optional method of development in a one-family residential zone to retain or plant a specified percentage of the Property in forest. For this Application, the minimum on-site forest retention must be equal to the conservation threshold. The conservation threshold determined based on the land use category and the acreage of the

Property, for this Application is 101.09 acres. The Application proposes to retain 172.08 acres of forest, thereby complying with this provision of the Forest Conservation Law.

There is no forest planting required per the Forest Conservation Law; however, for properties located within Special Protection Areas, the Environmental Guidelines require all unforested environmental buffers to be reforested. Any of this forest planting that is not meeting requirements of the Forest Conservation Law may be used to create a forest bank for use by other properties to meet their forest conservation requirements. Additionally, the Master Plan suggests incentives to encourage additional forest planting on properties in Ten Mile Creek, including creation of forest banking opportunities. This Application proposes to plant 82.34 acres of new forest on the Property, when added to the 172.08 acres of retained forest, results in 254.42 acres of protected forest on the Property. Approximately 245.27 acres of the forest will be protected through dedication to the M-NCPPC Department of Parks and 9.15 acres will be protected through a Category I conservation easement.

Tree Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Trees critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition. An Application that requests a Variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, diameter at breast height (DBH); are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The Applicant submitted a variance request dated October 14, 2020 for the impacts/removal of trees by the Preliminary Plan. The Applicant has requested a variance for the removal of five (5) trees that are 30 inches and greater, DBH, and to impact, but not remove, twenty-three (23) others that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law as listed in Tables 8 and 9. Disturbance from the Plan for the construction of roads and houses for the development and to provide access to the stream restoration work required by the Limited Amendment Master Plan will result in the removal of trees 51, 52, 54, 129, and 130, and impacts to trees 61, 177, 179, 180, 181, 185, 187, 188, 190, 191, 192, 193, 196, 197, 199, 200, 201, 202, 204, 205, 206, 207, 216, as noted on the FCP and the tables below.

Since the limits of disturbance for the demolition and reconstruction of the historic Cephas Summers House has not been finalized, an updated tree variance request may be required as part of the Final Forest Conservation Plan submitted with the Site Plan application. The impacts and removal of trees 1” caliper and greater that are associated with an historic site or structure require a variance.

Removed Protected Trees

Tree ID	Common Name	Scientific Name	DBH	Reason	Status
51	Red Mulberry	<i>Morus rubra</i>	38 in.	Roads and lots	Remove tree
52	Red Mulberry	<i>Morus rubra</i>	30 in.	Roads and lots	Remove tree
54	Red Mulberry	<i>Morus rubra</i>	32 in.	Grading, access to stream restoration	Remove tree if determined necessary after field evaluation
129	Red Mulberry	<i>Morus rubra</i>	38 in.	Road and lots	Remove tree
130	Black Cherry	<i>Prunus serotina</i>	36 in.	Proximity to development/hazard to safety	Remove tree

Impacted Protected Trees

Tree ID	Common Name	Scientific Name	DBH	Reason
61	Red Maple	<i>Acer rubrum</i>	34 in.	Grading for lots
177	Tulip Tree	<i>Liriodendron tulipifera</i>	36 in.	Stream Restoration
179	Tulip Tree	<i>Liriodendron tulipifera</i>	36 in.	Stream Restoration
180	Red Oak	<i>Quercus rubra</i>	40 in.	Stream Restoration
181	Red Oak	<i>Quercus rubra</i>	40 in.	Stream Restoration
185	Tulip Tree	<i>Liriodendron tulipifera</i>	40 in.	Stream Restoration
187	Tulip Tree	<i>Liriodendron tulipifera</i>	33 in.	Stream Restoration
188	Tulip Tree	<i>Liriodendron tulipifera</i>	31 in.	Stream Restoration
190	White Oak	<i>Quercus alba</i>	32 in.	Stream Restoration

191	White Oak	<i>Quercus alba</i>	32 in.	Stream Restoration
192	White Oak	<i>Quercus alba</i>	35 in.	Stream Restoration
193	White Oak	<i>Quercus alba</i>	36 in.	Stream Restoration
196	Red Maple	<i>Acer rubrum</i>	42 in.	Stream Restoration
197	Silver Maple	<i>Acer saccharinum</i>	36 in.	Stream Restoration
199	Tulip Tree	<i>Liriodendron tulipifera</i>	38 in.	Stream Restoration
200	Silver Maple	<i>Acer saccharinum</i>	31 in.	Stream Restoration
201	Silver Maple	<i>Acer saccharinum</i>	31 in.	Stream Restoration
202	Silver Maple	<i>Acer saccharinum</i>	38 in.	Stream Restoration
204	American Sycamore	<i>Platanus occidentalis</i>	48 in.	Stream Restoration
205	Red Oak	<i>Quercus rubra</i>	36 in.	Stream Restoration
206	American Sycamore	<i>Platanus occidentalis</i>	35 in.	Stream Restoration
207	Tulip Tree	<i>Liriodendron tulipifera</i>	32 in.	Stream Restoration
216	Tulip Tree	<i>Liriodendron tulipifera</i>	34 in.	Stream Restoration

Unwarranted Hardship

Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in an unwarranted hardship. Development on the Property is dictated by the existing site conditions, development standards of the zone, and requirements associated with Master Plan objectives. There are three main tributary streams traversing the Property with additional environmentally sensitive features associated with them, including tributary streams, wetlands, springs and seeps. The Master Plan requires expanded environmental buffers to protect these features and the water quality of the watershed. The result of the expanded buffers is a limited developable area located along the ridge between two of the main tributary streams. There are some individual Protected Trees located within the upland area and others located in the stream valleys. Further limiting the area available for development is the requirement of the Clarksburg West Overlay Zone, which has a maximum imperviousness of six percent. Three of the Protected Trees proposed for removal

(51, 52, and 129) are located in the middle of the upland area where development is expected to occur. Protected Trees 54 and 130 are proposed to be removed due to unavoidable impacts by grading activity which will be detrimental to the already poor condition of these trees. One of the Protected Trees proposed to be impacted but not removed, Tree 61, will be impacted by grading necessary to tie out the grades due to the steep topography on site. The remaining 22 trees proposed to be impacted but not removed will be impacted by the LOD for the stream restoration work. The stream restoration is required by the Limited Amendment Master Plan to restore portions of the stream that have been adversely affected by previous land uses. If these Protected Trees could not be impacted, the development anticipated by the Master Plan and the Zoning Ordinance would not occur. Given the limited area available outside of the environmental buffers, the steep topography, and requirements of the Master Plan, the Planning Board has reviewed this variance request and has determined that there would be an unwarranted hardship if a variance were not considered.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board in order for a variance to be granted. The Planning Board has made the following determinations in the review of the variance request and the proposed FCP:

Variance Findings

The Planning Board has made the following determination based on the required findings that granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property and the required stream restoration work. The Property contains numerous large trees located within the developable area of the site and within the stream valleys that would benefit from restoration. Granting a variance request to allow land disturbance within the developable portion of the site and meet the objectives of the applicable Master Plan is not unique to this Applicant. The Planning Board has determined that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, Master Plan recommendations for environmental protection and stream restoration, and the development standards of the zone.

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

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

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to reforest the currently unforested stream buffers, as well as provide additional mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

Mitigation for Trees Subject to the Variance Provision – There are five trees proposed for removal in this variance request resulting in 174 inches of DBH removed. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 43.5 inches with the installation of fifteen 3-inch caliper trees. Although these trees will not be as large as the trees lost, they will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to region. There is some disturbance within the critical root zones of twenty-three trees; however, they will receive adequate tree protection measures, their roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist as part of the ePlans review process. The County Arborist recommended that the variance be granted as noted in ePlans.

Variance Recommendation

The Planning Board finds that the variance be granted and that the FCP as conditioned, meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law and approves the FCP and associated tree variance, with conditions.

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

The Application meets the Preliminary Water Quality Plan requirements of Chapter 19 of the Montgomery County Code and the requirements of the Clarksburg West Environmental Overlay Zone.

Review for Conformance to the Special Protection Area Requirements

The Property is located within the Ten Mile Creek Special Protection Area on privately owned property where land disturbance is proposed; so, it is required to obtain approval of a water quality plan under Chapter 19-62(b) of the Montgomery County Code. As part of the requirements of the Special Protection Area Law, a Preliminary SPA Water Quality Plan should be reviewed in conjunction with a Preliminary Plan application. The Final SPA Water Quality Plan will be reviewed in conjunction with the future Site Plan application. Under Section 19-65 of the Code, the Montgomery County Department of Permitting Services (MCDPS), the Montgomery County Department of Environmental Protection (MCDEP) and the Planning Board have different responsibilities in the review of the Water Quality Plan. MCDPS and MCDEP have reviewed and conditionally approved the elements of the Preliminary Water Quality Plan under their purview. The Planning Board's responsibility is to determine if environmental buffer protection, SPA forest conservation and planting requirements, and limits on impervious surfaces have been satisfied.

MCDPS and MCDEP Special Protection Area Review Elements

In a letter dated September 3, 2020, MCDPS has conditionally approved the elements of the SPA Preliminary Water Quality Plan under their purview with conditions to be addressed with the Final Water Quality Plan review with the Site Plan application.

Site Performance Goals & Stormwater Management Concept Plan

As part of the Preliminary Water Quality Plan, the following performance goals were established for the Property:

1. Stream/aquatic life habitat protection
2. Maintain stream base flow
3. Protect seeps, springs, and wetlands
4. Maintain natural on-site stream channels
5. Minimize storm flow runoff increases
6. Identify and protect stream banks prone to erosion and slumping
7. Minimize increases to ambient water temperature
8. Minimize sediment loading
9. Minimize nutrient loadings
10. Control insecticides, pesticides, and toxic substances.

Per the MCDPS Preliminary Water Quality Plan approval memo, the required goals will be met via microbioretention facilities.

As discussed above, the water quality plan meets requirements of Chapter 19 by instituting the highest standards of protection for the development areas, avoiding

overflow discharges onto steep slopes, managing discharges from stormwater outfalls using step-pool storm drainage conveyance systems, minimizing environmental buffer impacts associated with ESD overflow outfalls. The Application has also received an approval of the Preliminary Water Quality Plan from MCDPS Water Resources Section on September 3, 2020.

Monitoring

The Applicant will pay a stream monitoring fee to MCDPS due at time of detailed sediment control plan submittal and a SPA Best Management Practices monitoring fee to MCDPS due at time of as-built submittal.

Planning Board Special Protection Area Review Elements

The Planning Board approved the elements of the SPA Preliminary Water Quality Plan under its purview.

Environmental Buffer Protection

An NRI/FSD No. 420190250 was approved by Staff on September 10, 2019. The approved NRI/FSD incorporates the expanded environmental buffer requirements outlined in the Limited Amendment Master Plan. The Application proposes some areas of minor encroachments into the environmental buffer, requiring approximately 0.10 acres of forest clearing. The unavoidable forest clearing within the buffer is for the construction of two storm drain outfalls which are necessary to provide safe conveyance of stormwater discharges at non-erosive velocities. The Environmental Guidelines (page 18) allow for “minimized buffer intrusions for construction of non-erosive storm drain outfalls”. Additional storm drain outfalls will encroach into unforested portions of the environmental buffer for similar reasons. In addition, the Application includes areas of temporary encroachment into unforested portions of the environmental buffer during construction to allow an access road to facilitate the earthwork balancing on site and grade tie-outs, which has resulted in the elimination and minimization of retaining walls. These currently unforested areas will be stabilized and reforested per the details on the Forest Conservation Plan. The Application also includes a limit of disturbance within the environmental buffer to provide access to and accomplish the stream restoration work recommended in the Limited Amendment to the Master Plan. The limits of disturbance for the stream restoration work will be finalized on the Final Forest Conservation submitted with the Site Plan, and the Applicant does not anticipate the removal of any trees for this work. The only permanent encroachments in the environmental buffer are for the storm drain outfalls. All other areas will be reforested and protected either through conveyance to the M-NCPPC Department of Parks or through a Category I conservation easement. The Application will reforest the entire environmental buffer, restore sections of stream channel that have been adversely affected by the past land use as illustrated on the Stream and Wetland Restoration Plan, and implement a Conservation Management Plan for other areas

of the Property. The environmental benefits will mitigate the effects of the stream valley buffer encroachments.

The Application meets all applicable requirements of the Environmental Guidelines and the 2014 *Ten Mile Creek Area Limited Amendment Master Plan*.

Forest Conservation

The Applicant submitted an FCP for review with the Preliminary Plan Application. The Application meets all applicable requirements of Chapter 22A of the Montgomery Forest Conservation Law as discussed previously in the Forest Conservation findings section of this report.

Impervious Surfaces

Impervious surface restrictions for development projects in this portion of the Ten Mile Creek SPA are set forth in the Clarksburg West Environmental Overlay Zone. As per Chapter 59, Section 4.9.6.D.1, the maximum total impervious surface area for any development after August 4, 2014 is six percent. The Application includes the construction of a residential development, including a 10-acre neighborhood park and the reconstruction of the historic Cephas Summers House. With the exception of the existing driveway that is utilized to access the landlocked property known as the Delaney residence, the Application proposes to remove existing impervious surfaces on the Property and restore those areas that will not be redeveloped to a pervious condition. The off-site Limits of Disturbance (LOD) associated with this Application is for a sewer connection along Old Clarksburg Road. The roadway will be torn up and reconstructed during the installation of the sewer line; however, the impervious surface of the roadway is exempt from the impervious surface limit under Section 59-4.9.6.B.1, where *any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014 that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued*. The resulting development proposes approximately 1,052,090 square feet or 24.15 acres of impervious surface on the Property, which translates to 5.9 percent of the 402.62-acre total area under application. The 24.15 acres of impervious surfaces includes 23.20 acres for the development, 0.10 acres allocated for the Cephas Summers House and driveway reconstruction, 0.60 acres allocated for the 10-acre neighborhood conservation park, and 0.25 acres for the existing driveway access to the Delaney property.

The Application meets all applicable requirements of Chapter 19 for SPA Water Quality Plans.

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

There is no record or other evidence to suggest that a burial site is located within the boundary of the Subject Property. Therefore, this finding does not apply.

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

There are no other applicable provisions specific to the Property and necessary for approval of the subdivision is satisfied.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Administrative Subdivision Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and


BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is ~~_____~~ **JAN 14 2021** (which is the date that this Resolution is mailed to all parties of record); and

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

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy, Patterson, and Verma voting in favor, and Vice Chair Fani-González abstaining at its regular meeting held on Thursday, January 7, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board