



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

MCPB No. 21-067  
Preliminary Plan No. 12020005A  
Creekside at Cabin Branch  
Date of Hearing: July 29, 2021

**AUG 11 2021**

**RESOLUTION**

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

WHEREAS, on December 3, 2020, the Planning Board, by Resolution MCPB No. 20-129, approved 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 402.6 acres of land in the RNC zone, located on the northwest quadrant of the intersection of MD Route 121 (Clarksburg Road) and West Old Baltimore Road ("Subject 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, the original Preliminary Plan approval only allowed 187 of the 326 residential units to be constructed based upon school capacity at that time, and required an amendment to the Preliminary Plan when additional school capacity was available; and

WHEREAS, on February 12, 2021, Shiloh Farm Investments, LLC & Pulte Home Corporation ("Applicant") filed an application for approval of an amendment to the previously approved Preliminary Plan to amend the school adequacy test to allow the remaining 139 residential dwelling units, which are part of the original 326 units, to be constructed and to convey an additional +/-31.3 acres to M-NCPPC for parkland on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan Amendment No. 12020005A, Creekside at Cabin Branch ("Amendment," or "Application"); and

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Approved as to  
Legal Sufficiency: /s/ Emily Vaias  
M-NCPPC Legal Department

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 July 16, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 29, 2021, 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, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan Amendment No. 12020005A to amend the school adequacy test to allow the remaining 139 of the 326 residential dwelling units to be constructed and to convey an additional +/-31.3 acres to M-NCPPC for parkland, and modifies the prior conditions of approval by replacing them in their entirety as set forth below with all other conditions remaining in full force and effect:<sup>1</sup>

- 1) This Preliminary Plan is limited to 326 lots and 22 parcels for 326 dwelling units, including 118 single-family detached dwelling units and 208 single-family attached dwelling units, including a minimum of 12.5 percent moderately priced dwelling units (MPDUs).
- 5) The Applicant must convey to Maryland-National Capital Park & Planning Commission ("Commission") the +/-312.04 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:

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<sup>1</sup> 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.

- 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.
- 11) Prior to issuance of each building permit above 60 single-family detached and 127 single-family attached dwelling units, the Applicant must obtain an assessment from Montgomery County Department of Permitting Services (MCDPS) for Utilization Premium Payments (UPPs) consistent with the Growth and Infrastructure Policy, as follows:
- a) no elementary school UPP required;
  - b) no middle school UPP required; and
  - c) a Tier 2 high school UPP per unit.
- The timing of the payment to be determined by MCDPS.
- 24) Prior to the approval of the Certified Preliminary Plan Amendment, the Applicant must illustrate all land necessary for dedication along the frontage of West Old Baltimore Road. The Applicant must provide this dedication and demonstrate this on the record plat.
- 29) The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for eighty-four (84) months from the initiation date of Planning Board Resolution No. MCPB 20-129 (February 14, 2021). The development must be phased as follows, as measured from that date:
- i. Within four years (48 months) building permits for at least 50 dwelling units are issued by Montgomery County.
  - ii. Within six years (72 months) building permits for at least 237 dwelling units are issued by Montgomery County.
  - iii. Within seven years (84 months) all building permits are issued by Montgomery County.
- 44) Prior to submittal of the Certified Preliminary Plan Amendment, the Applicant must make the following changes:
- a. Include a copy of the resolution and applicable Agency approval letters on the approval sheets.
  - b. Update all applicable sheets in the Preliminary Plan Amendment to include the additional +/-31.3 acres of additional land to be conveyed to M-NCPPC. The net tract area and the conservation management area must also be updated to reflect this change.

- 45) Prior to recordation of a plat for the Subject Property, the Applicant must preserve in perpetuity either by dedication as parkland or by application of one or more easement(s) or covenant(s) an area amounting to no less than 80 percent (or approximately +/-322 acres) of the net tract area of the Subject Property, as qualified rural open space and as identified on the Certified Preliminary Plan. The Applicant must record the easement(s) or covenant(s), in a form approved by the M-NCPPC Office of General Counsel, among the Montgomery County Land Records. The easement(s) or covenant(s) must include provisions for public access within the trail network of the Subject Property, and the potential for future connections to/from adjoining properties. Reference to the recorded easement or covenant must be noted on the Certified Site Plan and record plat(s).

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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:

*Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.*

All previous findings remain in full force and effect except as modified below.

- 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 is not changed by this Amendment, but a minor update to the development standards table is necessary to reflect the additional +/- 31.3 acres of land that will be conveyed to M-NCPPC for parkland as shown on Table 1 as follows:



*Table 1 – Development Standards for the RNC & Clarksburg West Environmental Overlay Zones*

Development Standards	Clarksburg West Environmental Overlay Zone Sect. 59.4.9.5	Required by the Zone Optional Method Development Sect. 59.4.3.5	Approved by the Planning Board and Binding on the Applicant
<b>Tract Area</b>	n/a	n/a	402.6 acres
<b>Net Tract Area</b>	n/a	n/a	+/-76.46 acres
<b>Dedication – Public Roads</b>	n/a	n/a	12.6 acres
<b>Dedication – Private Roads (alleys)</b>	n/a	n/a	1.5 acres
<b>Conveyance – Parks</b>	n/a	n/a	+/-312.04 acres

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

The full Preliminary Plan build-out (326 units) satisfies the Adequate Public Facilities (APF) review as explained below.

The APF test conducted for Preliminary Plan No. 120200050 covered transportation and other public facilities for the Application's total anticipated density, including up to 326 dwelling units. However, the Planning Board could only approve the 187 residential dwelling units under the applicable FY20 Annual School Test, since there was insufficient school capacity at the time to approve 326 dwelling units. Thus, the Applicant was directed to amend the Preliminary Plan when school capacity was available for the remaining 139 dwelling units.

School capacity is now available under the updated FY22 Annual School Test, and the Applicant is requesting approval for the remaining 139 dwelling units. Since all other public facilities were determined to be adequate by Preliminary Plan No. 120200050, this Amendment only evaluates the school's portion of the APF analysis for the additional 139 dwelling units (for a total of 326 dwelling units). Condition 29 for APF will be revised to reflect the increase in school capacity which accounts for the total number of requested units. The Amendment also includes conveyance of additional land area for parkland along with minor changes to the development conditions which does not impact the public facilities review.

Additionally, the APF phasing schedule has been adjusted to shift the requirement for the completion of 50 dwelling units from the first phase to the second phase. This is to accommodate the Applicant's concern that hurdles caused by the global economic conditions during the COVID-19 pandemic may impede the ability to

achieve the initial goal. The original phasing timeline remains, and this revision does not amount to an extension of the APF validity.

### **School Capacity**

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 Application was reviewed for school adequacy for the remaining 139 dwelling units, in addition to the 187 dwelling units previously approved (for a total of 326 dwelling units). The following analysis evaluates at the school capacity within each of these schools and the Application's impacts to the school's enrollment for Phase 2.

### *Overview and Applicable School Test*

, The updated FY22 Annual School Test, approved by the Planning Board on June 17, 2021 and effective July 1, 2021, is applicable to this Application which proposes 58 single family detached units and 81 single family attached units, for a total of 139 units.

### *School Adequacy Test*

The Application is served by Clarksburg Elementary School, Rocky Hill Middle School and Clarksburg High School. Based on the FY22 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

School	Projected School Totals, 2025				Adequacy Status	Adequacy Ceilings		
	Program Capacity	Enrollment	% Utilization	Surplus/ Deficit		Tier 1	Tier 2	Tier 3
Clarksburg ES <sup>1</sup>	311	256	82.3%	+55	No UPP	140	157	170
Rocky Hill MS	1,020	1,048	102.7%	-28	No UPP	98	176	329
Clarksburg HS	2,034	2,468	121.3%	-434	Tier 2 UPP			278

*Table 2 - Applicable FY2022 School Adequacy*

The school adequacy test determines the extent to which an applicant is required to make a Utilization Premium Payment (UPP) based on each school's adequacy status and ceilings, as determined in the Annual School Test. Under the FY22 Annual School Test, Clarksburg Elementary School and Rocky Hill Middle School do not require any UPP. However, development approved within the Clarksburg HS service area is automatically subject to a Tier 2 UPP as identified in Table 2. If the Amendment is estimated to generate more students than the identified ceilings, then additional UPPs or partial payments at multiple tiers may still be required.

### *Calculation of Student Enrollment Impacts*

To calculate the number of students generated by the Amendment, the number of dwelling units is multiplied by the applicable School Impact Area student generation rate for each school level. Dwelling units are categorized by structure



type: single family detached, single family attached (townhouse), low-rise multifamily unit, or high-rise multifamily unit.

With a net of 139 units that are not age-restricted, the Amendment is estimated to generate the following number of students based on the Subject Property's location within a Turnover Impact Area:

Type of Unit	Net Number of Units	ES Generation Rates	ES Students Generated	MS Generation Rates	MS Students Generated	HS Generation Rates	HS Students Generated
SF Detached	58	0.185	10.730	0.108	6.264	0.154	8.932
SF Attached	81	0.225	18.225	0.123	9.963	0.159	12.879
MF Low-rise	0	0.107	0.000	0.058	0.000	0.070	0.000
MF High-rise	0	0.051	0.000	0.024	0.000	0.030	0.000
<b>TOTALS</b>	<b>139</b>		<b>28</b>		<b>16</b>		<b>21</b>

*Table 3 - Estimated Student Enrollment Impacts*

As shown in Table 3, on average, this Amendment is estimated to generate 28 elementary school students, 16 middle school students and 21 high school students. The number of students generated does not exceed the adequacy ceilings identified for each school in Table 2. Therefore, no additional UPPs are required and neither are partial payments across multiple UPP tiers.

*Analysis Conclusion*

Based on the school capacity analysis performed, using the updated FY22 Annual School Test, the additional 139 units approved with this Amendment are subject to a Tier 2 high school Utilization Premium Payment as conditioned.

Montgomery County may modify the per unit UPP rates prior to payment of any required UPPs. The Applicant must pay the above UPPs to MCDPS based on the rates in effect at the time of payment. As conditioned, the Application will be required to pay the above UPPs to MCDPS.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 11 2021 (which is the date that this Resolution is mailed to all parties of record); and

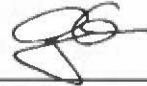
BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of

this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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**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 Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion, and Chair Anderson absent at its regular meeting held on Thursday, July 29, 2021, in Wheaton, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board