



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

MCPB No. 21-097
Site Plan No. 820200160
Creekside at Cabin Branch
Date of Hearing: September 9, 2021

OCT 14 2021

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on March 4, 2020, Pulte Homes ("Applicant") filed an application for approval of a site plan for 117 new single-family detached dwelling units, 208 new single-family attached dwelling units, and one existing single-family detached dwelling unit for a total of 326 units, including 12.5% MPDUs, and parkland dedication of approximately 312 acres to M-NCPPC on +/-402.6 acres of RNC zoned-land, located at 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 site plan application for the Subject Property was designated Site Plan No. 820200160, *Creekside at Cabin Branch* ("Site 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 August 27, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 9, 2021, the Planning Board held a public hearing at which it heard testimony and received evidence on the Application; and

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

WHEREAS, on September 9, 2021 the Planning Board voted to approve the Application subject to conditions, on the 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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820200160 for 117 new single-family detached dwelling units, 208 new single-family attached dwelling units, and one existing single-family detached dwelling unit for a total of 326 units, including 12.5% MPDUs, and parkland dedication of approximately 312 acres to M-NCPPC, the Subject Property, subject to the following conditions:¹

Density, Height & Housing

1. Density

The Site Plan is limited to 326 residential dwelling units consisting of 118 single-family detached dwelling units (one existing unit) and 208 single-family attached dwelling units.

2. Height

The development is limited to a maximum height of 35feet, as measured from the building height measuring points, as illustrated on the Certified Site Plan.

3. Moderately Priced Dwelling Units (MPDUs)

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (MCDHCA) in its letter dated July 26, 2021 and incorporates them as conditions of the Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend provided that the amendments do not conflict with other conditions of the Site Plan approval.

- a) The development must provide a minimum of 12.5 percent MPDUs, or MCDHCA-approved equivalent, consistent with the requirements of Chapter 25A and the applicable Master Plan.
- b) Before issuance of any building permit for any residential unit(s), the MPDU agreement to build between the Applicant and the MCDHCA must be executed.

Open Space, Facilities and Amenities

4. Open Space

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.

The Applicant must provide a minimum of 322.4 acres of rural open space and 27.0 acres of open space for recreation and amenities as shown in the Rural Open Space Exhibit of the Certified Site Plan.

5. Facilities and Amenities

- a) The Applicant must complete the open space amenity areas, to include final grade, stormwater, lawn establishment, and installing lawn furniture and hardscape for each open space and/or amenity area prior to issuing the last building permit within the block the open space amenity area is located in. If warranted, DPS may allow flexibility in facilitative pocket park completion, except for the following major amenity development triggers:
 - i. Prior to the issuance of the 75th building permit, the Applicant must complete:
 - a. The amenities within Pocket Park A including the sitting areas, trellis, and the stamped concrete identified on the Certified Site Plan as Homeowners Association (HOA) Parcel A and located south of Lindsay Drive.
 - ii. Prior to issuance of the 150th building permit, all open spaces and amenity areas located within HOA Parcel B and located southeast of the intersection of Pika Court and Creekside Boulevard must be completed. These amenities include the clubhouse, multi-purpose court, 25 meter pool, wading pool, tot lot which includes three play structures, shade structures, and green areas.
 - iii. Prior to the issuance of the 200th building permit, the Applicant must complete the amenities within Pocket Park B, C, and D including the sitting areas, trellis and the stamped concrete identified on the Certified Site Plan.
 - iv. Prior to the issuance of the 250th building permit, the Applicant must install the site elements including retaining walls and eight (8) trailheads as shown on the landscape plan sheets of the Certified Site Plan, or an equivalent approved by Staff.
 - v. Prior to issuance of the 300th building permit, all remaining amenity and open spaces on the Subject Property must be completed and landscaping installed.

Parks

6. Prior to the release of the 50th building permit, the Applicant must plant the meadow and maintain the 31.3 acres on the Subject Property located northwest of the neighborhood park, under a Maintenance and Management Agreement for a minimum of five (5) years and until conveyance to the Department of Parks.

Implementation of meadow establishment and maintenance Best Management Practices shall be in accordance with the Conservation Management Plan.

7. No construction equipment or material staging, stockpiling of dirt, or stripping of existing topsoil outside of that necessary to demolish the existing structures shall be permitted on land to be conveyed to the Department of Parks.
8. The Applicant must enter into a reciprocal access easement with M-NCPPC to allow access for residents and visitors to the natural surface trails within the Conservation Management Plan 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 adjusted by the Applicant with Department of Parks' review and approval.
9. All afforestation occurring within Park conveyance areas requires review and approval from Natural Resources Stewardship and Arboriculture Staff consistent with the Final Forest Conservation Plan. Any variation in plant species or quantity not already accounted for in the plant substitution list needs Natural Resources Stewardship and Arboriculture Staff approval. Parkland conveyance as part of Phase 2 will not occur until forest conservation mitigation requirements are fully complete, i.e. maintenance period compliance. Afforestation occurring in areas of parkland conveyance needs to be considerate of hazard tree distance standards and maintenance requirements relative to planned improvements. Conveyance of parkland with afforestation must not occur until after maintenance period fulfillment. Phase 2 proposed forest banking sale of credits must be complete within ten (10) years from the date of record plat recordation and conveyance to M-NCPPC. Parks will not accept the conveyance of XXXX while it is an active forest bank or before an afforestation maintenance plan is not completed. Conveyance must include removal and disposal of any required tree caging/protection. Forest Banks shall not be approved on areas of proposed dedication to Parks without the agreement of Parks.
10. An approved Park Construction Permit is required prior to any work in areas identified as future parkland.
11. Stream and Wetland Restoration Plan
The Stream and Wetland Restoration Plan must be reviewed and approved by the Department of Parks through the Park Construction Permit Review process. Prior to the Phase 2 parkland conveyance, all post-construction monitoring

required to satisfy state and federal permit conditions must be complete and final acceptance of stream restoration work will be required by Parks to ensure stream structures and restoration techniques are functioning as designed. The seven storm drain outfalls and associated regenerative step pool conveyance systems proposed with the development on proposed parkland will also need to be reviewed and approved by Parks as part of a separate Park Construction Permit application. Step Pool Stormwater Conveyance Systems constructed during previous development construction phases will require review and approval at the time of the Stream and Wetland Restoration Plan implementation to ensure stability and infiltration function. Final acceptance of these seven step pool features will be required by the Department of Parks prior to the Phase 2 parkland conveyance.

Site Plan

12. Site Design

- a) The exterior architectural character, proportion, materials, and articulation must be substantially similar to the schematic elevations shown in the Certified Site Plan, as determined by M-NCPPC Staff.
- b) The exterior architectural character, proportion, materials, and articulation of the MPDUs must be substantially similar to the exterior architectural character, proportion, materials, and articulation of the market-rate units, as determined by M-NCPPC Staff.
- c) For end units that are high visibility, as identified in the Certified Site Plan, all applicable building permit applications must clearly show the minimum architectural design requirements that follow. At a minimum, the side facades must include:
 - i. 1/3, 2/3 or Full brick consistent with the front elevation selected and one of the following options:
 - a. Six (6) windows with similar fenestration to the front elevation selected; OR
 - b. Four (4) windows with similar fenestration to the front elevation selected AND an architectural highlight, such as, a fireplace, bay window, or box window.
- d) For end units that are not high visibility, all applicable building permit applications must clearly show the minimum architectural design requirements that follow. At a minimum, the Applicant must wrap masonry material around the corner to hug the side facade for a depth of 12inches and the same height as used in the front facade (1/3, 2/3, or full).

13. Maintenance of Public Amenities

The Applicant and ultimately the future HOA is responsible for maintaining all publicly-accessible amenities including, but not limited to, mailboxes, trash

receptacles, benches, natural and hard surface trails outside of Park conveyance areas, trailheads in the privately maintained areas, recreation facilities, private light fixtures, landscaping, retaining walls, and hardscape.

14. Recreation Facilities

The Applicant must provide the minimum required recreation facilities as shown on the Recreation Exhibit of the Certified Site Plan.

15. Landscaping

- a) The Applicant must install all landscaping as shown on the landscape plan sheets of the Certified Site Plan within the latter of six months, or by the next planting season of receiving the Use and Occupancy certificate for the adjacent residential dwelling unit. Landscape and hardscape not associated with a specifically identified open space or amenity must be installed by the end of the next planting season after development activities conclude on the adjacent land. Stormwater management facility plantings must be completed as part of the stormwater management permit.
- a) The Applicant must install the plantings shown on the landscape plans of the Certified Site Plan. Any variation in plant species or quantity not already accounted for in the plant substitution list needs M-NCPPC Staff approval.
- b) Landscape and hardscape improvements must be installed in each open space or amenity area prior to that space being deemed complete per the open space, facilities, and amenities development trigger.

16. Lighting

- a) Prior to Certified Site Plan, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting in this Site Plan conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type. All onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b) All onsite down-lights must have full cut-off or BUG-equivalent fixtures.
- c) Deflectors will be installed on all proposed fixtures to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the Certified Site Plan.

Environment

17. Forest Conservation & Tree Save

The development must comply with the Final Forest Conservation Plan No. 820200160, approved as part of this Site Plan, subject to the following conditions:

- a) Prior to certification of the Site Plan, the Applicant must revise the Final Forest Conservation Plan to address minor comments in ePlans.
- b) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
- c) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
- d) Prior to the start of any clearing, grading, record plat, 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.
- e) Prior to any clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, and mitigation trees. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
- f) Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- g) The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection

- Staff. Flexibility in the timing of the plantings may be required to allow for the required stream restoration work to occur.
- h) The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches, including the mitigation tree plantings for the tree removals related to the demolition and reconstruction of the historic Cephas Summers House, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
 - i) Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services (“MCDPS”) for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.
 - j) The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

18. Conservation Management Plan (CMP)

- a) Prior to the start of any clearing, grading, record plat, or construction for this development Application, the Applicant must record a Conservation Management Easement over all areas of meadow plantings that will not be conveyed to the M-NCPPC Department of Parks, as specified on the approved Conservation Management Plan. The Conservation Management 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.
- b) Prior to any work associated with the Conservation Management Plan, the Applicant must enter into a Conservation Maintenance and Management Agreement (“CMMA”) in a form approved by the M-NCPPC Office of General Counsel in coordination with Montgomery County Department of Environmental Protection (DEP) for all areas shown within the Conservation Management Area.
- c) Prior to any clearing, grading or construction for this development Application, the Applicant must submit a financial security, in a form approved by the M-NCPPC Office of the General Counsel, as determined by an approved cost estimate. The cost estimate should include all site preparation, planting, and maintenance requirements as specified in the Conservation Management Plan. The bonding requirement may be phased as shown on the site development phasing plan.

- d) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations for the Conservation Management Easement areas.
- e) Prior to the first building permit, the Applicant must record a declaration of covenants that requires future maintenance of the Conservation Management Easement areas and includes reporting and certification that sufficient reserves are provided in any of the Applicant's or HOA's budget, as appropriate, and that a portion of HOA dues are to be put into escrow to cover future maintenance costs.
- f) Implementation of the Conservation Management Plan must begin during the first growing season following the release of the first sediment control permit. Maintenance records should be sent to M-NCPPC by the Applicant or his contractor quarterly after each phase of the CMP has been implemented. The Applicant and the future HOA must also schedule annual inspections and provide maintained reports with M-NCPPC consistent with the Certified Conservation Management Plan.
- g) Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation management easement signage along the perimeter of the conservation management easements, including the meadow conservation area, as shown on the CMP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

19. Noise Attenuation

- a) Prior to issuance of a building permit for any of the noise-impacted lots per the Noise Analysis dated December 4, 2020 or as amended, the Applicant must provide certification to M-NCPPC Staff from an engineer who specializes in acoustical treatment that:
 - i. The building shell for residential dwelling units on those lots will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b) Prior to issuance of any Use and Occupancy Certificate or Final Inspection, whichever is relevant, for any of the noise impacted units, a Professional Engineer must certify to the Planning Department and MCDPS that the noise-impacted units have been constructed in accordance with the certification of the engineer who specializes in acoustical treatments.
- c) If any changes occur to the Site Plan which affect the validity of the noise analysis dated December 4, 2020, acoustical certifications, and/or noise

attenuation features, a new noise analysis will be required to reflect the changes and new noise attenuation features may be required.

- d) All noise impacted lots/units must be clearly identified on the Certified Site Plan.

20. Historic Preservation

- a) Prior to the issuance of the first building permit for the entire development, the Applicant must file a building permit for the Cephas Summers House. The Applicant must obtain the final Certificate of Occupancy or Final Inspection for the Cephas Summers House within 18 months of the building permit issuance or prior to the release of the 50th building permit, whichever comes first.
- b) The Planning Board has reviewed and accepts the recommendations of the Historic Preservation Commission Staff as referenced in the Staff Report dated June 16, 2021 and approved by the Historic Preservation Commission (HPC) on June 23, 2021 and incorporates them as conditions of Site Plan approval. The Applicant must comply with each of the recommendations as set forth in the Staff Report.
- c) The 10.21-acre environmental setting for the Historic Cephas Summers House must be clearly delineated on the Certified Site Plan and the record plat.

21. Water Quality

- a) The Planning Board has reviewed and accepts the recommendations of the MCDPS – Water Resources Section in its Final Water Quality Plan letter dated June 29, 2021 and hereby incorporates them as conditions of the Site 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 Site Plan approval.
- b) Impervious Surfaces are limited to no more than six percent (6%) of the Application within the Clarksburg West Environmental Overlay Zone, as shown on the Impervious Surface Plan in the Certified Site Plan.
- c) Prior to the start of any clearing, grading or construction on the Subject Property, the Applicant must enter into an agreement with the Planning Board to limit impervious surfaces to the applicable levels shown on the Impervious Surface Plan in the Certified Site Plan. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records, and the Book and Page referenced on the plat.
- d) As part of any clearing, grading or construction, the Applicant must remove impervious surfaces and restore these areas to a fully pervious condition, as part of the initial phase as shown on the Impervious Surface Plan in the

Certified Site Plan. The removal and restoration of pervious surfaces must be in compliance with the M-NCPPC Department of Parks' "*Guidelines for converting Paved Areas into Pervious Greenspace*". M-NCPPC Forest Conservation Inspection Staff must be present at a pre-work meeting prior to the removal of the impervious surfaces.

Transportation & Circulation

22. Pedestrian & Bicycle Circulation

- a) The Applicant must provide sixteen (16) short-term bicycle parking spaces.
- b) The short-term spaces must be inverted-U racks (or approved equivalent) in a location convenient to the main entrance to the amenity areas (weather protected preferred). The specific location(s) of the short-term bicycle rack(s) must be identified on the Certified Site Plan.
- c) Prior to the issuance of the 75th building permit, the Applicant must construct the following master planned pedestrian and bicycle facilities, the exact location, design, and construction of which must comply with requirements set forth by the Montgomery County Department of Transportation, Division of Traffic Engineering and Operations:
 - i. A minimum 6-foot-wide bike lane along the frontage of the Subject Property on Clarksburg Road from the northeast Property line across the main site access point, and from there merging into the existing roadway shoulder.
 - ii. A minimum 5-foot-wide sidewalk along the frontage of the Subject Property on Clarksburg Road from the northeast Property line across the main site access point, and from there joining the existing sidewalk.

23. Fire and Rescue

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 August 11, 2021, 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 Site Plan approval.

24. DPS-ROW

The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services Right-of-Way Section (DPS-ROW) in its memo dated May 10, 2021 and incorporates them as conditions of approval. The Applicant must comply with each of the

recommendations as set forth in the memo, which DPS-ROW may amend if the amendments do not conflict with other conditions of Site Plan approval.

25. Site Plan Surety and Maintenance Agreement

Prior to issuance of the first above grade building permit (excluding retaining walls), the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond(s) or other form of surety in accordance with Section 59.7.3.4.K.4 of the Montgomery County Zoning Ordinance, with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include applicable Site Plan elements, including, but not limited to plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private roads and sidewalks, private utilities, paths and associated improvements of development, including but not limited to sidewalks, bikeways, private storm drainage facilities, street trees and street lights. The surety must be posted before issuance of any building permit of development and will be tied to the development program.
- c) The bond or surety must be tied to the development program, and completion of all improvements covered by the surety for each phase of development will be followed by a site plan completion inspection. The surety may be reduced based upon inspector recommendation and provided that the remaining surety is sufficient to cover completion of the remaining work.

26. Development Program

The Applicant must construct the development in accordance with a development program table that will be reviewed and approved prior to Certified Site Plan approval.

27. Certified Site Plan

Before approval of the Certified Site Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Include the stormwater management concept approval letter, development program, and Site Plan resolution, HPC approval, and other applicable resolutions on the approval or cover sheet(s).
- b) Update land area to be conveyed to M-NCPPC for parkland on the Recreation Plan (Sheet 19).

- c) Update Sheet 3 (High Visibility Architecture) to include an additional window for a total of six (6) windows for the unit type labeled, “20’ Building Streetscape”.
- d) Add a note stating that “Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services.”
- e) Submit revised architectural elevations for the Cephas Summers House in accordance with the conditions of approval for the HAWP as referenced in the June 23, 2021 HPC staff report and subject to review and approval by Historic Preservation Staff.
- f) Modify data table to reflect development standards approved by the Planning Board.
- g) Ensure consistency of all details and layout between Site and Landscape plans.
- h) Provide the standard landscape plan note that planting in stormwater management areas is subject to the final approval by MCDPS Water Resources staff.
- i) The Applicant must provide architectural elevations of the retaining wall along Lindsay Drive. The retaining wall must include a combination of decorative treatment, adequate landscaping, and a tiered design to minimize the visual impact of the retaining wall.
- j) Include proposed bicycle parking calculations and lot width at building line on Sheet 17.
- k) The Applicant must revise the Final Stream Restoration Plan to address comments in ePlans.
- l) The Applicant must revise the Final Conservation Management Plan to address comments in ePlans.
- m) Revise all applicable sheets in the plans to include extensions of the natural surface trail to adjacent properties.
- n) Include the following note in the Site Plan and Landscape Plan, “M-NCPPC Staff in coordination with the Applicant may request minor field adjustments to the trail alignment”.
- o) Include a phasing plan as shown in the Staff Report.
- p) A contiguous trail alignment must be implemented as part of Phase 1 of the Park conveyance and include the ability to build and provide public access through the Phase 2 conveyance area.
- q) Revise applicable plan sheets to include the location of the 31.1 acres where a meadow will be established.
- r) Revise the Conservation Management Plan to include signage along the perimeter of the Conservation Management Easement.
- s) Update the Site Plan to identify noise impacted units.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Creekside at Cabin Branch, Site Plan No. 820200160, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

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. When reviewing an application, the approval findings apply only to the site covered by this Application.

The approval of the Site Plan findings will only apply to the Subject Property being reviewed as part of this Application.

2. To approve a site plan, the Planning Board must find that the proposed development:

a) satisfies any previous approval that applies to the site.

The Site Plan conforms to all conditions of Preliminary Plan 120200050 and Preliminary Plan Amendment No. 12020005A, which were approved by MCPB Resolution No. 20-129, dated January 14, 2021 and MCPB Resolution No. 21-067, dated August 11, 2021, respectively.

b) satisfies under Section 7.7.1.B.5 the binding elements of any development plan or schematic development plan in effect on October 29, 2014;

This section is not applicable as there are no binding elements of an associated development plan or schematic development plan in effect on October 29, 2014.

c) satisfies under Section 7.7.1.B.5 any green area requirement in effect on October 29, 2014 for a property where the zoning classification on October 29, 2014 was the result of a Local Map Amendment;

This section is not applicable as the Property's zoning classification on October 29, 2014 was not the result of a Local Map Amendment.

d) satisfies applicable use standards, development standards, and general requirements under this Chapter;

The Application complies with the requirements of Chapter 59. The residential development was reviewed for compliance with the dimensional requirements for the RNC, optional method (which is permitted when recommended by the Master Plan pursuant to Sect. 59.4.3.5.D.4), and Clarksburg West Environmental Overlay Zones as specified in the Zoning Ordinance. The lots meet all the dimensional requirements for area, frontage, width, and setbacks in the RNC and Overlay zones. A detailed summary of this review is included in Table 1 below.

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 RNC Zone Optional Method Development Sect. 59.4.3.5	Approved by the Planning Board and Binding by the Applicant
Tract Area	n/a	n/a	402.6 acres
Net Tract Area	n/a	n/a	+/-76.46 acres
Dedication – Public Roads	n/a	n/a	12.6 acres
Dedication – Private Roads (alleys)	n/a	n/a	1.5 acres
Conveyance – Parks	n/a	n/a	+/-312.04 acres
Usable Area	5 acres (min.)	10	394 acres
Parcels	n/a	n/a	22
Density (max)	1 unit/acre of usable area** 394 units	1 unit/acre of usable area 394 units	.82 units/ acre of usable area 326 units
MPDUs	n/a	12.5 percent	12.5 percent
Lots			<u>326</u> 208 118
	Townhouse		
	Detached House		
Open Space (min)			
Rural Open Space	80 percent	65 percent	86 percent
Open Space for Recreation and Amenities	n/a	5 percent	6.8 percent
Dimensions (min)			
Lot Area	Determined at site plan		
Detached House	Determined at site plan	4,000 sf	5,400sf – 10,260sf*
Townhouse	n/a	1,200 sf	1,200sf – 3,000sf*
Cephas Summers House	n/a	4,000 sf	10.21 acres*
Lot width at front building line	Determined at site plan	100 feet	25 feet*
Detached House	Determined at site plan	n/a	14 feet*
Townhouse	Determined at site plan		
Lot width at front lot line		25 feet	25 feet*

Development Standards	Clarksburg West Environmental Overlay Zone Sect. 59.4.9.5	Required by the RNC Zone Optional Method Development Sect. 59.4.3.5	Approved by the Planning Board and Binding by the Applicant
Detached House Townhouse	Determined at site plan Determined at site plan	14 feet	14 feet*
Frontage on street or open space	n/a	Required	Provided
Coverage (max) Detached House Townhouse	Determined at site plan Determined at site plan	35 percent n/a	35 percent* n/a*
Placement			
Principal Building Setbacks (min)			
Front setback from public street Detached House Townhouse	Determined at site plan Determined at site plan	15 feet 15 feet	15 feet* 15 feet*
Front setback from private street or open space Detached House Townhouse	Determined at site plan Determined at site plan	15 feet 15 feet	15 feet* 15 feet*
Side street setback Detached House Townhouse	Determined at site plan Determined at site plan	15 feet 15 feet	15 feet* 15 feet*
Side or rear setback, abutting property not included in application Detached House Townhouse	Determined at site plan Determined at site plan	Equal to required setback for a detached house building type in the abutting zone under standard method	Equal to required setback for a detached house building type in the abutting zone under standard method*
Rear setback, alley Detached House Townhouse	Determined at site plan Determined at site plan	4 feet 4 feet	4 feet* 4 feet*
Accessory Structure Setbacks (min)			
Front setback Detached House/Townhouse	Determined at site plan	5 feet behind front building line	5 feet behind front building line*
Side street setback Detached House Townhouse	Determined at site plan Determined at site	Side street setback of principal building	20 feet* 15 feet *

Development Standards	Clarksburg West Environmental Overlay Zone Sect. 59.4.9.5	Required by the RNC Zone Optional Method Development Sect. 59.4.3.5	Approved by the Planning Board and Binding by the Applicant
	plan		
Side or rear setback, abutting property not included in application Detached House Townhouse Cephas Summers House Side Setback Cephas Summers House Rear Setback	Determined at site plan Determined at site plan Determined at site plan Determined at site plan	Equal to required setback for a detached house building type in the abutting zone under standard method	15 feet* 10 feet* 17 feet* 35 feet*
Rear setback alley Detached House/Townhouse	Determined at site plan	4 feet	4 feet*
Height (max)			
Principal Building Detached House/Townhouse	n/a	35 feet	35 feet
Accessory Structure Detached House/Townhouse	n/a	25 feet	25 feet
Minimum Vehicle Parking Residential Amenities (Pool & Clubhouse)	n/a n/a	650*** 23	650 23****
Bicycle Parking Short Term	n/a	n/a	16
Impervious Surface Level	6 percent	n/a	Maximum 6.0 percent

* Restriction on properties located in the Clarksburg West Environmental Overlay Zone under Sect. 4.9.6.D.1. Pursuant to this section in the Zoning Ordinance, the minimum lot area, lot dimensions, building coverage, and building setbacks of the underlying zone do not apply and are determined during the site plan approval process under Sect. 7.3.4.

** The Master Plan recommends 1 unit/acre for development on the Property (Master Plan, p. 42).

*** Parking requirement under Sect. 59.6.2.

**** Parking will be provided via on-street parking.

In addition, the Application complies with the specific development standards of the Clarksburg West Overlay Zone set forth in 59.4.9.6.D as follows:

1. *Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under Section 4.9.6.B, the maximum total impervious surface area for any development after August 4, 2014 is 6% of the total area under application for development.*

The Application provides a maximum impervious area of 6 percent.

2. *County owned land or land under a conservation easement granted to the benefit of the County that is not managed as parkland by the Maryland-National Capital Park and Planning Commission may not add any impervious surface.*

No impervious surface area will be added within the conservation easement areas. And?

3. *Lot size requirements in the underlying zone do not apply.*

Lot sizes were determined as part of the Site Plan application.

4. *When site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks of the underlying zone do not apply. Such requirements are determined during the site plan approval process under Section 7.3.4.*

The minimum lot area, lot dimensions, building coverage, and building setbacks were determined as part of the Site Plan application. See Table 1 above.

5. *All environmental buffer areas or natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area must be regulated as environmentally sensitive areas, just as other areas identified environmentally sensitive in law, regulations, or in the Planning Board's Guidelines for the Environmental Management of Development, as amended.*

Environmental buffer areas or natural resources recommended for protection in the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area have been properly regulated and protected.

6. *All environmentally sensitive areas must be included in the required open space area.*

All areas outside of the building envelope are protected and included in the required open space area.

7. *The minimum area devoted to open space must be 80% of the total area under application for development. For the purpose of this Overlay zone, open space is defined as rural open space as described and managed under Section 6.3.4.A.2, Section 6.3.4.A.4.b, and Section 6.3.4.B.*

The Application provides the minimum 80 percent of open space required. See Table 1.

Division 6 – General Development Standards

i. Division 6.1 Site Access

The Property access provides safe and convenient vehicular, bicycle, and pedestrian circulation within the Subject Property to the individual residential units, open spaces, and amenities, and to adjoining properties. Access will be provided at the intersection of Clarksburg Road and Creekside Boulevard. At the time of approval, the intersection will be unsignalized as it did not meet studied signalization warrants. The main entrance at this intersection will be constructed as a standard monumental entrance, partially separated by a median. As conditioned as part of the Preliminary Plan, the Applicant will conduct a later signal warrant analysis to ensure the long-term safe operation of the main site entrance and will assume responsibility for implementation of a signal if warranted. An internal connection approximately 100-feet northeast of the main site entrance will also be created to serve two existing properties to the southwest of the entrance, one of them the Cephass Summers House. This will take the form of a shared driveway that connects to a small portion of the former Clarksburg Road (which has since been realigned to restrict access from these homes).

An additional emergency-only access point will be provided north of the Site to connect with retained Old Clarksburg Road. Old Clarksburg Road will remain terminated in its current location with signage added to restrict access from the road. Which road?

Pedestrian and bicycle access to the Property is adequately and safely accommodated at the new residential development. The Applicant proposes to reconstruct an existing six-foot-wide bike lane along the northern portion of Clarksburg Road frontage. Bikeable shoulders are currently in place along the remaining portion of frontage to the south below the entrance, continuing to West Old Baltimore Road. Sidewalks are located along both sides of all public roads as well as additional interior connections provided across and along mews. The sidewalks also connect to the natural surface trail connection throughout the development which are accessed via eight trailheads which connect to open space and amenity areas, and natural surface trails on the northern portion of the Property.

Access to Clarksburg Road and the internal public and private street right-of-way widths are all in conformance with those approved by the Preliminary Plan as part of the Adequate Public Facilities Review.

ii. Division 6.2. Parking, Queuing, and Loading

The Site Plan provides adequate, safe, and efficient vehicle and bicycle parking to serve the development. Vehicle parking in the RNC Zone has a minimum requirement of two spaces per single-family dwelling unit, except for MPDUs which require one space per unit. On-street and off-street parking is provided for the residential development. The residential development includes a total of 650 parking spaces where 650 parking spaces are required. These spaces are located on private driveways and garages and therefore adequate vehicular parking is provided. A minimum of 115 on-street spaces are provided throughout the residential development. Twenty-three on-street parking spaces are provided in close proximity to the pool and clubhouse along Creekside Boulevard. Although 23 off-street parking spaces are required, the Planning Board approved the Applicant's waiver request to provide on-street parking in lieu of providing off-street vehicle in order to satisfy the parking requirement for the community swimming pool and the clubhouse as part of the Preliminary Plan. Therefore, adequate vehicle parking is provided.

Short-term bicycle parking is also available to the public and is conveniently located in the community recreation areas (Pocket parks C and D and community center).

iii. Division 6.3. Open Space and Recreation

Open Space

The Site Plan adequately meets the Open Space requirements as detailed in the Open Space Applicability section of the Zoning Ordinance, including Section 59.4.9.6D as discussed above. A total of approximately 86 percent of the Property will be devoted to rural open space which exceeds the minimum 80 percent of rural open space required. Rural open space will either be conveyed to M-NCPPC for parkland or managed by the future Homeowners Association and designated as part of the Conservation Management Plan. The Applicant is providing an additional 6.8 percent of open space for recreation and amenities shown in light blue.

Recreation

The Site Plan is in compliance with the 2017 *Recreation Guidelines* by providing a variety of recreation facilities onsite. Future residents and their visitors of all age groups will be adequately served by a variety of active and passive recreation facilities which are safe and accessible.

The primary recreation area that will serve the residential development is centrally located and will feature amenities such as a 2,500 square foot

clubhouse, 1,400 square-foot multi-purpose court, 25 meter 3,690 square foot pool, 650 square foot wading pool, tot lot which includes three play structures, and a large green area with shade structures. The recreation area will be landscaped and will consist of several seating areas, picnic tables, trash receptacles and a foot washing station.

Four landscaped pocket parks will also be provided throughout the development. Pocket Park A includes a curved trellis feature, benches, and stamped concrete. Pocket Park B includes a picnic trellis feature, picnic tables, and also includes stamped concrete. Pocket Park C includes a curved trellis feature, benches, and stamped concrete. Pocket Park D includes a trellis feature, benches, river rocks, chess table with seating, and stamped concrete.

Recreation amenities will also include natural surface trails which will be supplemented with a total of eight trailheads located throughout the Subject Property.

Additional amenity features distributed throughout the residential development include dogipots, wildlife feeders, benches, and a steppingstone path.

Therefore, as described above, the Site Plan adequately meets the open space and recreation requirements.

iv. Division 6.4. General Landscaping and Outdoor Lighting

Landscaping

The Site Plan meets the standards for the provision of landscaping and outdoor lighting as required by Division 6.4. The landscaping provided is appropriate for this residential development by achieving several objectives. It provides canopy coverage and shade on all the roads and open spaces. A variety of large deciduous trees including Sweetgum, Willow Oak, Littleleaf Linden, American Elm, Black Gum, American Beech, and American Hornbeam line up along the public streets. Final location and species for street trees on public rights-of-way will be determined by DPS-ROW Section at the time of ROW permit. Streets have been designed to maximize the number of large trees provided and open space areas also benefit from a large number of canopy trees.

Smaller plant material, including understory trees and shrubs, are used to delineate spaces, such as play areas and sitting areas, and to highlight specific features, such as entrance signs. Additionally, the landscaping provided efficiently adds screening and buffering at key locations within the community, specifically in areas between the development and rural open space and in areas where retaining walls are located.

Additionally, all stormwater management facilities, which are dispersed throughout the development, will be heavily planted with a variety of plant material to achieve Environmental Site Design (ESD) goals. These facilities and associated landscaping are reviewed and approved by DPS-SWM. Ultimately, the landscaping provided will strengthen community character, and improve water and air quality.

Lighting

The on-site lighting is typical street lighting found along most internal residential developments. The photometric plan shows how the lighting meets the illumination requirements to avoid light in excess of 0.5 footcandles from spilling over the Subject Property line. The lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. Street lighting consists of pole mounted light fixtures with a maximum height of approximately 17-feet located on all public roads, alleys, and major open spaces. The Applicant will also coordinate with MCDOT, Division of Traffic Engineering and Operations to locate streetlights in the public rights-of-way.

As shown in the Development Standards table, the Site Plan meets all of the general requirements and development standards of Section 4.5 of the Zoning Ordinance and as outlined above, the general development requirements of Article 59-6 of the Zoning Ordinance.

e) *satisfies the applicable requirement of:*

i. *Chapter 19, Erosion, Sediment Control, and Stormwater Management; and*

The Application meets the Final 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 with 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 located; therefore, 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 Water Quality Plan was reviewed and approved in conjunction with Preliminary Plan No. 120200050. The Final SPA Water Quality Plan was submitted as part of the 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 Final Water Quality Plan under their purview. The Planning Board's responsibility is to determine if environmental guidelines for the protection of buffers and other sensitive areas, SPA forest conservation and planting requirements, and limits on impervious surface have been satisfied.

MCDPS AND MCDEP Special Protection Area Review Elements

On June 29, 2021, MCDPS conditionally approved the elements of the SPA Water Quality Plan under its purview with conditions to be addressed during the detailed sediment control/stormwater management plan stage.

Monitoring

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

Planning Board Special Protection Area Review Elements

The Final Water Quality Plan elements related to environmental guidelines and sensitive area protection, forest conservation and impervious surfaces are consistent with the approved Preliminary Water Quality Plan. The Planning Board approves the elements of the SPA Final Water Quality Plan.

Environmental Guidelines and Forest Conservation

The Applicant submitted a Final FCP for review with the Site Plan Application. The Application meets all applicable requirements of the Environmental Guidelines, the Limited Amendment Master Plan, and Chapter 22A of the Montgomery County Forest Conservation Law as discussed below in the Forest Conservation findings section of this report.

Impervious Surface Limitations

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 (6%) percent. The Application includes the construction of a residential development, including a 10-acre neighborhood park and the reconstruction of the historic Cephass 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 are 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, which provides, “*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 1,052,169 square feet or 24.1 acres of impervious surface on the Property, which translates to 5.9 percent of the 402.6-acre total area under the Application. The 24.1 acres of impervious surface includes 23.2 acres for the development, 0.1 acres allocated for the Cephass 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.

The Water Quality Plan proposes to maintain natural drainage patterns (pre-development drainage divides) as much as possible with the overall drainage to each tributary receiving more than 98% of the pre-developed area. As a condition of the Water Quality Plan approval, DPS required enhanced soil preparation and topsoiling above and beyond the MDE requirements for all disturbed areas of more than 1,000 square feet. This will consist of soil loosening and fertilizing the top 6-8 inches of soil and providing a minimum 8-inch layer of topsoil. This will serve to promote infiltration and groundwater recharge. Infiltration and groundwater recharge were additionally encouraged throughout the development using infiltration ESD facilities where feasible and the addition of two-feet (2') of stone storage below all micro bioretention facilities.

At the detailed plan review stage, DPS will review the stormwater management plans to assure that the ESD facilities are non-erosive and safely conveyed to a stable outfall. The ESD facilities are not designed to overflow in an uncontrolled manor. Flows that exceed the design storm will be conveyed to the storm drain system which will ultimately outfall to a series of step pools to mitigate flow velocities. Additionally, at this stage DPS will review the plans for the minimization of disturbed areas.

ii. Chapter 22A, Forest Conservation.

The Subject Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Preliminary Forest Conservation Plan was approved by the Planning Board as part of Preliminary Plan No. 120200050. The Preliminary Forest Conservation

Plan approval included a variance for impacts and removal of subject trees. The Final Forest Conservation Plan was submitted with the Site Plan Application, as required, and includes a request for a tree variance for subject trees that were not granted a variance with the Preliminary Forest Conservation Plan. The impacts to these trees were not known at the time of the Preliminary Forest Conservation Plan review. The Site Plan and accompanying Final Forest Conservation Plan comply with the Montgomery County Environmental Guidelines, the Limited Amendment Master Plan, and the Forest Conservation Law, as conditioned and described below.

Environmental Guidelines and Limited Amendment Master Plan

As described in the Staff Report for the Preliminary Plan application for this Property, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420190250 was approved on September 10, 2019. The NRI/FSD identifies the environmental features and forest resources on the Subject Property, under the guidance of the *Environmental Guidelines, Guidelines for Environmental Management of Development in Montgomery County* (“Environmental Guidelines”) and the Limited Amendment. 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 (Master Plan, 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.

Consistent with, and as described and approved with the Preliminary Plan, the Application proposes some minor encroachments into the environmental buffer for necessary and unavoidable storm drain outfalls, grade tie-outs, and access to areas to complete the required stream restoration work. The storm drain outfalls are the only permanent encroachments in the environmental buffer, and these are permitted by the Environmental Guidelines when necessary to provide safe, non-erosive conveyance of stormwater to the receiving streams. All other areas of

environmental buffer 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 environmental buffers, restore sections of stream channel that have been adversely affected by the past land use as illustrated on the Final 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

- **Final 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. A Preliminary Stream and Wetland Restoration Plan was approved as part of the Preliminary Plan application. The Final Stream and Wetland Restoration Plan, which is consistent with the approved Preliminary Stream and Wetland Restoration Plan, is included with this Application. The Planning Board has reviewed and approves the Final Stream and Wetland Restoration Plan. Final approval will take place as part of the Parks permitting process.
- **Final Conservation Management Plan**
The Limited Amendment to the Master Plan requires this Property to include a Conservation Management Plan (CMP) as part of a development application. As with the Preliminary CMP, the Final CMP was 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 Property's Site Plan. The CMP includes all land outside of the limits of disturbance that is not conveyed as parkland or included in the rural open space easement. The approved Preliminary CMP includes +/-62 acres of the Property to be preserved as pervious land cover through the creation of meadow habitat and grassed areas planted with individual native trees and shrubs. Since the approval of the Preliminary Plan, the Applicant has increased the land area to be conveyed for parkland and therefore results in a reduced CMP area. The Applicant will now convey 31.3 acres of the CMP for parkland and therefore, the Final CMP includes 30.9 acres of the Property. As conditioned, this land will be maintained by the Homeowner's Association under a Maintenance and Management Agreement.

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

Forest Conservation

As required by the Forest Conservation Law, a Final Forest Conservation Plan (FCP) for the Property was submitted with the Site Plan. The FCP is substantially consistent with the Preliminary Forest Conservation Plan that was approved as part of the Preliminary Plan. The Final FCP results in greater forest retention and therefore less forest clearing than the approved Preliminary FCP. The 0.21 acre increase in forest retention is due to the elimination of an access road previously shown to facilitate earthwork balancing during construction.

The Property contains approximately 172.74 acres of existing forest. The Final FCP proposes to remove 0.45 acres and retain 172.29 acres of forest. This does not generate a forest planting requirement as illustrated on the forest conservation worksheet on Sheet 1 of the FCP. The 0.45 acres of forest removal includes 0.10 acres of forest removal for the installation of storm drain outfalls, 0.34 acres of forest clearing for the demolition and reconstruction of the historic Cephas Summers House, 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 a conservation easement, it is counted as cleared for forest conservation purposes.

The 175.40 acres of forest retention includes the existing forest adjacent to the environmental buffers as required for this Property by the Limited Amendment Master Plan (Master Plan, page 19). 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. The Application proposes to plant 82.34 acres of new forest on the Property, which when added to the 172.29 acres of retained forest results in 254.63 acres of protected forest on the Property. Approximately 249.45 acres of forest will be protected through dedication to the M-NCPPC Department of Parks and 5.18 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 Tree’s 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 in diameter at breast height (“DBH”); are part of a historic site or designated with an historic structure; are designated as a national, State, or County champion tree; 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 approved Preliminary FCP included a variance that was granted to remove five trees that are 30 inches and greater DBH, and to impact, but not remove, twenty-three others that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Since the limits of disturbance for the demolition and reconstruction of the historic Cephas Summers House had not been finalized at the time of the Preliminary Plan review and approval, the trees associated with the historic house were not included in the previous variance request. The limits of disturbance for the demolition and reconstruction of the historic Cephas Summers House have been finalized and a variance request for the Protected Trees impacted by this activity was submitted as part of this Application.

Variance Request

The Applicant submitted a variance request dated April 30, 2021 for the removal of 121 and impacts to three (3) Protected Trees for the demolition and reconstruction of the historic Cephas Summers House. All trees that are associated with an historic structure, regardless of size, require a variance if they are impacted or removed. The Protected Trees to be removed and impacted are shown on the Final FCP.

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. The historic Cephas Summers House has been left in disrepair. It is the goal of the Limited

Amendment Master Plan and Historic Preservation to reconstruct this structure continuing to recognize the history of the Site while also allowing it to function as a home for a modern family, contributing to the County's housing supply. In order to access the dilapidated structure, demolish it and reconstruct it, the numerous trees that have grown up around it over the years will need to be removed and impacted. If these Protected Trees could not be impacted, the goals of the Master Plan and historic preservation would not be fulfilled. Given the existing conditions, including the location of the historic structure and its state of disrepair, along with the location of the numerous trees of all sizes surrounding it, the Planning Board has reviewed this variance request and has determined that there would be an unwarranted hardship if a variance were not considered. The use as a historic house is reasonable and significant.

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.

Variance Findings

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 necessary reconstruction of the historic structure. The Property contains a dilapidated historic structure that the Historic Preservation Commission determined needed to be demolished and reconstructed rather than rehabilitated. Trees of any size are considered Protected Trees within an historic setting. There are numerous trees that have grown up surrounding the historic structure and it would be impossible to demolish and reconstruct this structure without impacting these trees. Granting a variance request to allow disturbance to reconstruct an historic structure to meet various objectives is not unique to this Applicant. Granting 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, and Master Plan and Historic Preservation recommendations.

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 requirement to demolish and reconstruct the historic house, it is not based on conditions of 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 121 trees approved for removal in this variance request. The Applicant proposes mitigation at a rate that approximates the form and function of the trees being 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 196.75 inches with the installation of 66 3-inch caliper trees. These trees 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 the region. There is some disturbance within the critical root zones of 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 for impacts to any tree that is part of an historic site 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 did not provide a recommendation; therefore, per Section 22A-21(c)(3), the recommendation is presumed to be favorable.

Variance Recommendation

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

- f) *provides safe, well-integrated parking, circulation patterns, building massing and, where required, open spaces and site amenities;*

The Site Plan provides for safe and well-integrated parking, circulation patterns, building massing, and open spaces and site amenities. The Site Plan creates a network of public roads that connect to Clarksburg Road and adjoining development to the south. In addition, there are several private alleys serving the rear-loaded units in the development. All public streets include at a minimum 5-foot-wide sidewalks. These pedestrian and bike facilities provide access to all on-site amenity spaces.

The Site Plan shows the single-family detached units in the western portion of the development to transition to a higher density development to the east. Higher density is located to the east in the Cabin Branch development that is located along Clarksburg Road. The Site Plan has several blocks of rear-loaded townhouses facing onto public roads or open space mews. Along Lindsay Drive, the Site Plan has several blocks of front-loaded townhouses.

The primary community recreation area located southeast of Pika Court and Creekside Boulevard is a major open space area, which will be privately owned and maintained. It is generally centrally located within the Application. The primary open space area is adequately framed by public streets – Creekside Boulevard and Pika Court - which include parallel parking on the northern side of Creekside Boulevard and the eastern side of Pika Court. Amenities in the central open space area provide unique opportunities for recreation and fitness, ranging from a multi-age playgrounds, a clubhouse, multi-purpose court, 25 meter pool, wading pool, shade structures, and green areas.

The development includes a network of natural surface trails providing access to the forested areas, including the stream valleys that provide a green corridor throughout the majority of the Property. The Application will retain approximately 172 acres of existing forest and plant approximately 82 acres of new forest, resulting in approximately 254 acres of forest on the Property that will either be dedicated to

the M-NCPPC Parks or protected in a Category I Conservation Easement. A total of 86 percent of the Property will be devoted to rural open space and an additional 6.8 percent is approved for additional open space for recreation and amenities. These open spaces and amenities are well integrated via natural surface trails throughout the Subject Property that are demarcated with trailheads along sidewalks on public streets.

- g) *substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan;*

The Site Plan continues to substantially conform to the 2014 *Ten Mile Creek Area Limited Amendment* (“Master Plan”) as approved by the Planning Board on December 3, 2020 under Resolution No. 20-129. Specific elements that have been finalized as part of the Site Plan include the following:

Conservation Management Plan

A Conservation Management Plan as required by the Master Plan (Master Plan, page 19) has been reviewed and recommended for approval by the Department of Parks, the Planning Department, and the Montgomery County Department of Environmental Protection. This CMP covers all land areas outside the limits of disturbance, not included in the rural open space easement, and not dedicated as Parkland. This area will be maintained by the future Homeowners Association as meadows and grassed areas. Condition No. 4 of the Preliminary Plan has been met as part of the Site Plan.

Final Stream and Wetland Restoration Plan

The Ten Mile Creek 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. (Master Plan, page 22). A Final Stream and Wetland Restoration Plan, which is consistent with the approved Preliminary Stream and Wetland Restoration Plan, was included with the Site Plan Application. As conditioned, the details of the Final Stream and Wetland Restoration Plan will be reviewed and approved by the Department of Parks through the Park Construction Permit Review process. As conditioned, an approved Park Construction Permit is required prior to any work in areas identified as future parkland.

Final Forest Conservation Plan

The Final Forest Conservation Plan has slightly more forest retention than the approved Preliminary FCP. Although there is no forest planting required by the Forest Conservation Law, forest planting within unforested stream buffers is required within Special Protection Areas. Since this forest planting is above and beyond the requirements of the Forest Conservation law, there is an opportunity to create a much-needed forest bank for use by other properties to meet their forest

conservation requirements. This opportunity is in accordance with Master Plan recommendations. (*Master Plan, pages 21 and 54*).

Historic Cephas Summers House Property, (Master Plan, page 42)

The Cephas Summers House is a locally-designated historic resource located on Parcel 900 along Old Clarksburg Road. As part of the approval of the Preliminary Plan, the environmental setting was reduced from 66.4-acres to 10.21 acres. Since the approval of the Preliminary Plan, the Applicant has met with the Historic Preservation Commission to review the Historic Area Work Permit (HAWP) application. At this meeting, HPC approved the Historic Area Work Permit for the new construction of the Historic Cephas Summers House subject to conditions. These conditions include updating the architectural details outlined in the elevations of the Historic Cephas House as referenced in the Montgomery County Historic Preservation Commission Staff Report. As conditioned, the Applicant will address these comments prior to certification of the Site Plan. Therefore, the Application meets Condition No. 35 of the Preliminary Plan and conforms to the Master Plan recommendation for the Historic Cephas Summers House.

Noise

The Preliminary Plan approval included a condition requiring the Applicant to provide a Noise Analysis to demonstrate conformance with the *1983 Staff Guidelines For the Consideration of Transportation Noise Impacts In Land Use Planning and Development* (“Noise Guidelines”).

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.

In a letter dated February 16, 2021, the Applicant submitted a request for a waiver from the 55 dBA Ldn noise threshold and allow the application of the 60 dBA Ldn noise 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. The Planning Board approves the waiver and using an exterior noise threshold of 60 dBA and based on the Noise Guidelines, an interior threshold of 45 dBA.

The Applicant submitted a Noise Analysis for the Subject Property that was prepared by Phoenix Noise and Vibration and dated December 4, 2020. The Analysis concluded that none of the rear yards of outdoor activity areas will be exposed to

ground level noise levels greater than 55 dBA Ldn; therefore, no further analysis or mitigation will be required for outdoor areas. Some of the townhomes closest to Clarksburg Road will be exposed to future roadway noise levels above 55 and 60 dBA Ldn. A building shell analysis will be required as a condition of the Site Plan approval for the impacted units to determine if standard building construction will be sufficient to address the traffic related noise, or if modifications will be necessary.

- h) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

The Planning Board approved Preliminary Plan No. 120200050, MCPB Resolution No. 20-129 dated January 14, 2021 and Preliminary Plan Amendment No. 12020005A, MCPB Resolution No. 21-067 dated August 11, 2021, and found that the Application will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. The impact of the Application is equal to or less than that approved as part of the Preliminary Plan.

- i) on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and*

The Property is in the Rural Neighborhood Cluster Zone and is compatible with the character of the residential neighborhood. The development is clustered in such a way that is compatible with the existing development. Higher density is located along Clarksburg Road where townhouse development is located and compatible with the higher density residential development across Clarksburg Road known as the Cabin Branch development. Lower density is provided in the western portion of the development area, which is consistent with the low density residential development west of the development. The development also utilizes materials that are seen in adjacent and nearby development and therefore compatible with the character of the residential neighborhood.

- j) on a property in all other zones, is compatible with existing and approved or pending adjacent development.*

The Site Plan is compatible with existing, and approved, adjacent development in terms of density, building types, massing, orientation, and architectural treatment.

East of Clarksburg Road is the Cabin Branch residential development approved under the RMX-1/TDR and MXP Zones. This property was approved for residential and commercial use on a 540 acre tract. Directly across the Subject Property from Clarksburg Road includes the Winchester, approved for 186 residential dwelling units resulting in 3.46 dwelling units per acre and Toll I and Toll II developments approved for 435 dwelling units resulting in 5.38 dwelling units per acre. These developments include a combination of single-family detached, single-family attached, and multi-family units that are up to 4-stories. Just east of the development and adjacent to the property is a residential parcel with a density of 1.1 dwelling unit per acre and developed with a single-family detached house. Directly north of the development includes two properties, each developed with a single-family detached dwelling unit, one of which has a density of .59 dwelling unit per acre and the other has a density of 1 dwelling unit per acre. The development is surrounded by residential development that ranges in density and massing. Therefore, this development is within the range that exists in the adjacent and nearby development in terms of density with a density of .82 dwelling units per acre and compatible with the massing in the surrounding development since it consists of two-story single-family detached and three-story single-family attached residential development. The development is also oriented towards the street which is consistent with surrounding development. Finally, architectural treatment is also consistent with surrounding development since the development incorporates similar materials used on existing and approved residential development.

This density is consistent with Master Plan recommendations and the residential development is compatible with the existing nearby development in terms of building types, massing, orientation, and architectural treatment.

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

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-7.3.4.H; 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 OCT 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 and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, September 23, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board