



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

DEC 23 2014

MCPB No. 14-112
Site Plan No. 820140160
Clarksburg Premium Outlets at Cabin Branch
Date of Hearing: December 4, 2014

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-7.1.2 of the Zoning Ordinance, the Montgomery County Planning Board is authorized to review Site Plan applications; and

WHEREAS, under Section 59-7.7.1.B.1 of the Zoning Ordinance, this Site Plan is being reviewed under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on June 30, 2014, Simon/Clarksburg Development, LLC. ("Applicant"), filed an application for approval of a Site Plan for Phase I of a multi-phased mixed-use development consisting of 450,000 square feet of retail and restaurant uses, parking facilities and public amenities on 84.24 acres of MXPZ zoned-land, located at the intersection of I-270 and Clarksburg Road ("Subject Property"), which is a portion of the 535 acre Cabin Branch Development approved under Preliminary Plan Nos. 12003110B¹, and 12003110C in the Clarksburg Policy Area, Master Plan ("Master Plan") area; and

WHEREAS, the Cabin Branch Development is also subject to that Infrastructure Site Plan and Final Water Quality Plan No. 820050150, as amended ("Infrastructure Site Plan"), which, in accordance with Conditions 1 and 14(c) of Site Plan No. 82005015B, is further amended through approval of this Site Plan; and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820140160 ("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

¹ All prior Preliminary Plan conditions were superseded by Preliminary Plan No.12003110B.

Planning Board, dated November 21, 2014, setting forth its analysis of and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 4, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on December 4, 2014, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Presley, seconded by Commissioner Fani-Gonzalez, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, Presley, and Wells-Harley voting in favor,

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 820140160 for 450,000 square feet of retail and restaurant uses, parking facilities and public amenities, the Subject Property, which also serves to amend the Infrastructure Site Plan, subject to the following conditions.²

Conformance with Previous Approvals

1. Development Plan Conformance

The development must comply with all applicable binding elements, general notes and the development program as shown on the Certified Land Use of the Development Plan (DPA 13-02) approved February 4, 2014.

2. Preliminary Plan Conformance

The development must comply with the conditions of approval for Preliminary Plan Nos. 12003110B (MCPB No. 08-117) and 12003110C (MCPB No. 14-111), unless amended.

3. Infrastructure and Road Only Site Plan

Applicant must comply with the conditions of approval as set forth in the following:

- a. Site Plan No. 820050150, MCPB No. 07-131,
- b. Site Plan No. 82005015A, MCPB No. 08-68,
- c. Site Plan No. 82005015B, MCPB No. 11-124,
- d. Site Plan No. 82005015C (administratively approved November 27, 2012),
- e. Site Plan No. 82005015D, (administratively approved May 2, 2013),
- f. Site Plan No. 82005015E, MCPB No. 14-36, and
- g. Site Plan No. 82005015F, MCPB No. 14-79.

² 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.

4. Incorporation of the Water Storage Tank

Upon acceptance of Staff recommendations for the associated Mandatory Referral No. 08001-WSSC-1A, the Applicant will meet their on-site obligations as discussed in Washington Suburban Sanitary Commission ("WSSC") Amended Phase I Letter (dated October 8, 2014), or as amended. As described in the letter, the Applicant must comply with the conditions and service requirements prior to the issuance of the use and occupancy permit for the commercial shopping center.

5. Site Plan Amendments

- a. Minor modifications to public plazas, landscaping, lighting, recreation building footprint, site elements, structures (not considered buildings) and paving materials may be approved by Staff and documented with M-NCPPC and the Montgomery County Department of Permitting Services ("MCDPS") Site Plan Enforcement.
- b. Other modifications to the Site Plan must follow the procedures outlined in Manual of Development Review Procedures approved and adopted December 2007, as may be amended.

Environment Planning & Water Quality

Forest Conservation Plan

6. The release of 1,261 square feet of conservation easement in planting area K, stage I (Final Forest Conservation Plan "FCP" Sheet 58), and the new Category I conservation easement increasing planting area K by 1,261 square feet (FCP Sheet 46) must be recorded by deed in the land records within ninety (90) days of the mailing of this Planning Board Resolution.
7. The record plat must reflect a Category I conservation easement over all areas of stream buffers, forest save, and forest planting.
8. All off-site reforestation must occur within the Clarksburg Special Protection Area or the Ten Mile Creek Special Protection Area unless otherwise specifically approved by the Planning Board.
9. The implementation of the project's forest conservation mitigation requirements, which includes forest retention, onsite and offsite afforestation, reforestation and landscape credit, may be phased. The phasing of the total forest conservation mitigation must be proportionate to the greater of i) the area proposed for disturbance relative to the total project size, or ii) the amount of density for each stage relative to the total project density. The phasing triggers, forest conservation mitigation type, amount of mitigation, and disturbance areas are to be defined on the FCP and revised as needed with subsequent site plans. Conservation easements may be recorded using a metes and bounds description and sketch if preceding recordation of plats, provided the recording information

for the conservation easement is referenced and the easement line is shown on subsequent record plats.

10. The development must comply with the conditions of the approved Final Forest Conservation Plan.

11. Final Water Quality Plan

The Applicant must conform to the conditions as stated in the MCDPS Final Water Quality Plan approval letter dated September 30, 2014 unless otherwise amended provided the amendments do not conflict with other conditions of the Site Plan approval.

12. Stormwater Management

The Planning Board has accepted the recommendations of the MCDPS – Water Resources Section in its stormwater management concept letter dated September 30, 2014, and hereby incorporates them as conditions of the Site Plan approval. Therefore, 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 the amendments do not conflict with other conditions of the Site Plan approval.

Transportation Planning & Circulation

13. Transportation

- a. The total future development on this Site Plan is limited to 450,000 gross square feet of retail and restaurant uses and public facilities within the MXPB Zone.
- b. The Applicant must undergo further assessment of private drive aisles to determine their adequacy prior to approval for any additional or residential development.
- c. The Certified Site Plan must show the internal circulation as private drive aisles.
 - i. The Applicant must construct a private drive aisle (labeled as Premium Outlets Drive) from the main entrance at Clarksburg Road (MD 121) to the southern end of the site that terminates at the amphitheater as shown on the Site Plan to applicable Montgomery County Department of Transportation (“MCDOT”) Road Code Standard MC-219.01: Commercial/Industrial Dual Road Modified. The typical curb to curb dimensions will consist of travel lanes that will be 12-feet wide varying between 1 and 2 lanes in each direction and the median width will vary from 4-30 feet as indicated on the Site Plan. A shared use path will be accommodated within the 80 foot typical section as indicated on the Site Plan from the private

- drive aisle connecting to Cabin Branch Avenue heading south towards the proposed amphitheater.
- ii. The Applicant must construct a private drive aisle that traverses the back of the Subject Property and connects at Premium Outlets Drive to applicable MCDOT Road Code Standard 214.02: Commercial/Industrial Road Modified and the 30-foot wide drive aisle shall not have travel lanes that exceed 12-feet in width. Additionally, the Applicant must construct all sidewalks, on the Subject Property within the Site Plan, to applicable ADA standards. The striping plan of the drive aisle will be reviewed prior to Certified Site Plan.
 - iii. The Applicant must construct an east-west drive aisle extension from Cabin Branch Avenue to the Premium Outlets Drive (a private drive aisle) for secondary site access to applicable MCDOT Road Code Standard MC-219.0: Commercial/Industrial Dual Road Modified. The typical curb to curb dimensions will consist of two travel lanes that will be 12-feet wide in each direction and the median width will vary from 2-12 feet as indicated on the Site Plan. A shared use path will be accommodated within the 80 foot typical section as indicated on the Site Plan from Cabin Branch Avenue to the private drive aisle that connects with the amphitheater as shown on the Site Plan.
 - iv. Before the release of Site Plan Surety, the Applicant must provide a letter of acceptance from MCDPS Zoning & Site Plan Enforcement Staff indicating that they received certification from a licensed engineer that all internal drive aisles and associated sidewalks and shared use paths have been built to the above structure standards and ADA standards.
- d. The Applicant must install twelve (12) pockets of short term public bicycle parking racks, a minimum of eight (8) ("inverted U" racks or similar) and up to four (4) public art oriented bicycle racks, as indicated on the Site Plan.
 - e. The Applicant must install four (4) bike shower facilities as indicated on the Site Plan.
 - f. The Applicant must install two (2) long term bicycle lockers each with 30 long term, bicycle parking spaces (60 total long-term bicycle parking spaces) as shown on the Site Plan.

14. Pedestrian Circulation

- a. The Applicant must construct an eight-foot shared-use path on the southern/western side of a private drive aisle (Premium Outlets Drive) from the intersection that provides access to Cabin Branch Avenue to the amphitheater at the southern end of the site as shown on the Site Plan.

- b. The Applicant must provide a bicycle connection from the site's main entrance at Clarksburg Road (MD 121) to the shared path that is being constructed on the south/western side of a private drive aisle (Premium Outlets Drive). A bicycle facility (bicycle lanes) along the private drive aisle that traverses the back of the Outlets is proposed, unless the Applicant can demonstrate an alternative way of accommodating a bicycle connection with the purpose of connecting the shared use path that terminates at the main entrance to the site off of Clarksburg Road to the shared use path on Premium Outlets Drive. The bicycle connection will be reviewed prior to Certified Site Plan.

15. Fire and Rescue

The Planning Board accepts the recommendations of the Montgomery County Fire and Rescue Services (MCFRS) Fire Code Enforcement Section in its letter dated September 22, 2014, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCFRS may amend if the amendments do not conflict with other conditions of Site Plan approval.

Miscellaneous

16. Public facilities and utilities

The Applicant must construct the public facilities and utilities prior to the issuance of the final use and occupancy permit. The development program must include the following facilities:

- a. 24-inch water line that connects into the water storage tank,
- b. 8-foot hike/biker trail along the southern property edge,
- c. Public plaza areas (e.g. north, east and west plazas),
- d. Amphitheater,
- e. Bicycle facilities along the 8-foot hiker/biker trails and within the shopping area, and
- f. Electric charging stations will be provided within the parking facilities, as noted on the Site Plan.

17. Common Open Space Covenant

The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578.

18. Maintenance of Public Amenities

The Applicant is responsible for maintaining all publicly accessible amenities including, but not limited to the hiker/biker pathways, amphitheater, public plaza areas, electric car charging stations, water features, tot lot, public art and the access to the water storage tank.

Site Plan

19. Site Design

- a. The exterior architectural character, proportion, materials, and articulation must be substantially consistent with the schematic elevations as shown on Sheets A-1 to A-43 of the submitted architectural drawings, as determined by Staff.
- b. Permanent signage must have a permit issued by the MCDPS; which may also approve a variance from any provision from Section 59F-1.3 except Division 59F-7 "Prohibited Signs".
- c. A Signage Package that clearly identifies any placement of signage on the building facades, walls and free-standing signs (i.e. way-finding package) as approved by MCDPS must be included in the Certified Site Plan.
- d. The Way-Finding Conceptual Plan may include, but is not limited to internal and external signage, banners, lighting and design elements that efficiently direct patrons through the Subject Property. The Way-Finding Concept Plan must be included in the Certified Site Plan and must be substantially consistent with the signage package approved by MCDPS.
- e. Locate and include traffic signage and stop bars on the Signage Way-finding and Site Plans on the Certified Site Plan.
- f. Provide alternative design solutions for the painted concrete screen walls near the loading dock areas on the Certified Site Plan. The screen walls, fronting the surface parking facilities, must be treated as an extension of the building façades.

20. Landscaping

- a. The surface parking facilities that are directly adjacent to the public roadways (e.g. Clarksburg Road), private drive aisles or driveway must be adequately screened from the major views of vehicular traffic flow with a densely planted hedgerow and a decorative screen wall.
- b. Planted buffers along the parking edges must be at least 10 feet wide.
- c. Shade trees along the 8-foot hiker/biker trails must be professionally pruned ("limbed up") so as not to obstruct the views of vehicles, bikers and pedestrians.

21. Lighting

- a. Before issuance of the any building permit, the Applicant must provide certification to Staff from a qualified professional that the lighting plans conform to the Illuminating Engineering Society of North America (IESNA) standards for commercial/retail developments.
- b. All onsite down-light fixtures must be full cut-off fixtures.

- c. Deflectors must be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.
- d. Illumination levels must not exceed 0.5 footcandles (fc) at any property line abutting county roads.
- e. The height of the light poles must not exceed 30 feet including the mounting base.

22. Design Guidelines

- a. The Applicant must comply with the revised Cabin Branch Guidelines for the Site Plan Review ("Design Guidelines"), as amended for Destination Retail specifically associated with but not limited to the site design, architectural design, landscape design, streetscape, sidewalks and pathways, internal crosswalks, street trees, lighting and parking.
- b. The Development Program must adequately address phasing of the design features to be approved by the Cabin Branch Design Committee prior to the certification of the Site Plan. Any significant revisions to the Development Program will be submitted with the building permit and reviewed by Staff prior to the issuance of the building permit.
- c. The Applicant must submit an approval letter from the Cabin Branch Design Review Committee stating that the buildings and associated design features within their respective phases are in conformance with the Certified Site Plan and the Design Guidelines.
- d. The Applicant must submit to the Planning Director (or designee) architectural plan construction documents for each individual building permit application that demonstrates conformance with the Design Guidelines and the Development Program.
- e. Submissions will be deemed approved after 10-days, unless Applicant is notified that the submission does not comply.

23. Site Plan Surety and Maintenance Agreement

Before issuance of the any building permit, the Applicant must enter into a Site Plan Surety and Maintenance Agreement with the Planning Board. The Agreement must include a performance bond(s) or other form of surety as required by Section 59-D-3.5(d) 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, recreational facilities, water features, site furniture, artwork, trash enclosures, retaining walls, fences, railings, private aisles/drives, specialty pavement patterns, pathways and associated improvements within the relevant phase of

development. The surety must be posted before issuance of any building permit within each relevant phase 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 inspection and potential reduction of the surety.
- d. The bond or surety for each phase shall be clearly described within the Site Plan Surety & Maintenance Agreement including all relevant conditions and specific Certified Site Plan sheets depicting the limits of each phase.

24. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Lighting and sidewalks must be installed within six months after construction of the drive aisles. Plantings within the parking facilities may wait until the next growing season.
- a. On-site amenities including, but not limited to, sidewalks, benches, trash receptacles, and bicycle facilities must be installed prior to release of any building occupancy permit.
- b. Public facilities including but not limited to the plaza area, bike facilities, electric car charging stations, tot lot, amphitheater and the 8-foot hiker/biker trail will be included in the development program and constructed prior to the issuance of the final use and occupancy permits.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the FCP, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. Landscaping associated with each parking lot and building must be completed as construction of each facility is completed.
- f. Pedestrian pathways and seating areas associated with each facility must be completed as construction of each facility is completed.
- g. Provide each section of the development with necessary roads.
- h. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

25. Certified Site Plan

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

- a) Include the final forest conservation approval letter, stormwater management concept approval letter, development program, Fire & Rescue approval letter and Site Plan resolution on the approval or cover sheet(s).
- b) Add a note to the Site Plan stating that "M-NCPPC Staff must inspect all tree-save areas and protection devices before clearing and grading."
- c) Modify data table to reflect development standards approved by the Planning Board.
- d) Ensure consistency of all details and layout between Site and Landscape Plans.

BE IT FURTHER RESOLVED, that all site development elements as shown on Clarksburg Premium Outlets at Cabin Branch drawings stamped by the M-NCPPC on October 1, 2014, shall be 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. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The Site Plan conforms to the Development Plan Amendment (DPA-13-02) and the binding elements of that approval. The DPA limits the maximum density of the different uses by area. The North District (Area A and B) consists of retail, office, public use and residential uses. The Applicant will construct Phase I of the Areas A and B as approved and with the intent of creating a vibrant and active commercial shopping center in close proximity of the I-270 interchange.

The activation of the streetscape along Clarksburg Road with the permitted uses stimulates economic development within the North District and becomes a destination that draws regional and local traffic to the Cabin Branch Neighborhood. The retail and employment uses will serve the immediate needs of the existing residents, while creating a strong platform for the construction of office and residential uses in the near future.

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

Commercial and retail uses as approved are allowed in the MXPB Zone. This Site Plan fulfills the purposes of the zone by providing multi-use centers located outside the central business districts and transit stations development areas. This zone is intended to provide a more flexible approach to the comprehensive design and development of multi-use centers than the procedures and regulations applicable under various conventional zoning categories and other planned development zones. This zone is utilized to implement existing public plans and pertinent county policies in a manner and to a degree more closely compatible with said County plans and policies than may be possible under other zoning categories. The specific purposes of the MXPB Zone have been adequately addressed in this Application.

- a) *To establish standards and procedures through which the land use objectives and guidelines of approved and adopted master or sector plans can serve as the basis for evaluating an individual multi-use center development proposal.*

Working with the Clarksburg Town Architect and associated Design Review Committee, the Design Guideline provisions have been modified in order to better conform to destination retail requirements. The Planning Board approved the revised Design Guidelines, finding that the revisions adequately address the needs of retail tenants and pedestrians, and are compatible with the surrounding uses. The destination retail component is a necessary enhancement to the Design Guidelines and the revisions are considered modest changes that will not adversely impact the overall design character of the Cabin Branch Neighborhood.

- b) *To encourage orderly, staged development of large-scale, comprehensively planned, multi-use centers by providing procedures for the submission of a concept for an entire site and subsequent development plans for each stage of development, as identified on the concept plan.*

The Applicant has given adequate consideration to future development phases, specifically regarding the construct of additional employment uses (e.g. office and retail uses). Given the necessary parking requirements for the permitted uses, the second phase of development will look for opportunities to convert surface parking into structured parking facilities. The Applicant will need to maintain adequate parking spaces throughout the development process. Therefore, the future building footprints are contingent on the total number of buildable parking spaces. The office/retail buildings typically prefer clear visibility from major roadways (e.g. Clarksburg Road and

I-270), while residential units should be located within walking distance to other residential uses and public amenities.

- c) *To provide, where appropriate, higher density residential uses integrated into the overall multi-use center.*

This Application is for Phase I only. Other future phases will introduce other employment uses (office/retail) and residential uses that are compatible with existing and surrounding uses. Until such time, the Winchester Phases I and II (toward the south) provide residential uses within in close proximity of the development.

- d) *To ensure internal compatibility of residential and nonresidential uses by providing a suitable residential environment that is enhanced by the commercial, recreational, employment and institutional amenities within commercial and industrial components of the multi-use center.*

The North District of the overall Cabin Branch Development primarily consists of a hotel, banks, and other commercial/retail uses (e.g. the outlet shopping center, restaurants, car wash, etc.). The Gosnell Property (Site Plan No. 820060240) and the retail shopping center are compatible uses that provide connections to the surrounding neighboring properties (i.e. residential uses). The streetscape along Clarksburg Road will be activated with pedestrians and building frontage in close proximity of major intersections and roundabouts; thereby slowing down vehicular traffic. The Clarksburg community has long awaited the opportunity for local retail and will further benefit from enhancements to the public facilities and amenities that will be developed concurrently with this application.

- e) *To assure compatibility of the proposed land uses with surrounding uses by incorporating higher standards of land planning and site design than could not be accomplished under conventional zoning categories.*

The existing grades and the environmentally sensitive features surrounding the Subject Property provide a unique opportunity to create a more sustainable retail center. The existing topography drops approximately 100 feet from MD 121 to the low point in the stream valley buffer on the southern portion of the Subject Property. This topography allows the shopping center to be tiered as the grades drop. The building footprints and parking facilities were designed to work with the natural grades which require less land disturbance and be more compact than the typical construction for retail shopping centers. The middle-tier building(s) are 2-stories with retail frontages on two different elevations.

- f) *To encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial/industrial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation, and social activity. It also intended that open space and amenities be located so as to achieve the physical and aesthetic integration of the uses and activities within each development. In addition, structured parking within mixed-use planned developments is encouraged to help achieve the open space and amenities objectives of the zone. Where surface parking is necessary, the purposes of this zone may be achieved by the provision of additional landscaping.*

Some of the public, open and green space areas are located along the perimeter of the Subject Property. Four Public plaza areas, an 8-foot hiker/biker trail (bike racks included) and amphitheater are all available to the public and linked to the surrounding uses. These public amenities are accessible via the internal sidewalks and pathways. The amphitheater is located in the lower right corner (toward the southeast), accessible via the surface parking facility and adequately buffered from I-270.

Structured parking facilities are anticipated with the future construction of office and residential phases. The surface parking facilities are heavily planted to exceed the internal landscape requirement by 18 percent (5% required, 23% approved).

- g) *To encourage and provide for the development of comprehensive non-vehicular circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas open spaces, recreational areas, commercial and industrial area and public facilities.*

An 8-foot hiker biker trail and 5-foot sidewalks will be constructed throughout the Subject Property. These circulation systems provide walkable connections to the surrounding uses. The hiker/biker trail is primarily located along the internal drive aisles and stream valley buffer. The majority of the trail is separated from the 5-foot pedestrian sidewalk; while the sidewalks and pathways generally circulate through the center and the surface parking facilities to provide a direct connection to the shopping center and amphitheater.

- h) *To encourage and provide for efficient use of energy resources through shared facilities or other economies of scale or technology, including innovative fuels and district heating.*

The retail shopping center is designed to exceed the Green Building environmental requirements and intends to be LEED Certified. Twenty-four (24) electric car charging stations will be phased into the surface parking facilities; four (4) stations will be constructed initially and twenty (20) will be added as needed. Solar panels will be installed on the structural canopies between the retail buildings and the energy generated from the solar panels feeds directly into the food court.

The buildings and public spaces are designed to maximize solar exposure and reduce overall energy consumption by decreasing energy dependency during peak hours of the day.

- i) *To preserve and take the greatest possible aesthetic advantage of existing trees and to minimize the amount of grading necessary for construction of the development.*

The natural topography and existing environmental features (i.e. the stream valley buffer) provide an opportunity to terrace the construction of the retail buildings and parking facilities. The overall layout embraces the southern perimeter of the Subject Property and frames major views towards the forested edges. The planted edges will be increased around the stream valley buffer, amphitheater and the storm water management facilities.

The Site Plan meets all of the development standards of the MXPDP Zone. Regarding the parking requirements, the Planning Board approved a slight reduction (2.8%) as permitted by Section 7.7 (b)(1) of the Zoning Ordinance effective October 30, 2014. This Application was accepted by Staff on June 30, 2014 and was considered in progress before the October 30, 2014 deadline. Therefore, the Applicant may choose to have the parking calculations be reviewed with the new parking provisions. The circulation systems (e.g. sidewalks, hiker/biker trails and pathways) are in close proximity to local residential and retail uses, which enables walkable linkages to the Subject Property and have the potential to reduce overall dependency on vehicles.

Requirements of the MXPDP Zone

The Application meets all of the applicable requirements of the MXPDP Zone. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Project Data Table for the MXPDP Zone

Development Standard	Permitted/Required	Approved Site Plan No. 820140160
MXPDP Lot Tract Area		
Gross Tract Area	283.50 acres	84.24 acres
Dedication - Public Roads (acres)	N/A	6.45 acres
Dedication – HOA (acres)	N/A	22.37 acres
WSSC Water Tower (Lot 2)	N/A	1.61 acres
Net Area (acres)	N/A	53.81 acres
Max. Floor Area Ratio (FAR)	0.30 FAR	0.012 FAR
Max. Gross Commercial/Retail	484,000 sf.	450,000 sf.
Max. Building Height (feet)	N/A	70 feet
Min. Building Setbacks (feet)		
From Residential Zones, other than one-family detached buildings	100 feet	100 feet (plus)
Front	10-feet	10 feet
Rear	0 feet	0 feet
Side (Street Side)	10 feet	10 feet
Side (Interior Lot)	3 feet	3 feet
Side (Alley)	3 feet	3 feet
R/W Truncation	0 feet	0 feet
Min. Green Area for MXPDP zone		
Residential Uses	50% (34.90 acres)	23% (16.50 acres) ¹
Commercial Uses	40% (85.48 acres)	68% (144.70 acres)
Min. Internal Landscaping within Surface Parking Facilities (%)	5% (51,422 sf.) ³	23 % (236,966 sf.)
Tree Canopy (%)	25%	50% ⁴
Min. Parking Spaces⁵		

¹ The residential green space calculations reflect approved and proposed Site Plans. This figure is an estimation of green area within each plan thus far. As final designs are completed, this table is subject to change and will be updated with more precise calculations for the overall MXPDP Zone. This table does not reflect the future construction of residential uses for this development.

² Total parking area is 23.61 acres.

⁴ The percentage is based of the total acreage.

⁵ Per the requirements of the Zoning Ordinance effective October 30, 2014, Section 7.7.1 Exemptions B (1).

Commercial/ Retail Uses	2,185 spaces	2,123 spaces ⁶
Restaurant Uses	162 spaces	170 spaces
Total	2,347 spaces	2,293 spaces
Handicap Parking	46 spaces	+ 48 spaces
Electric Charging Stations	N/A	24 spaces ⁷
Bicycle Spaces	115 spaces	218 spaces
Motorcycle Spaces	10 spaces	10 spaces

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Buildings and Structures

The buildings and structures on the Subject Property will be located south of Clarksburg Road (directly adjacent to the street edge) and west of I-270. The main entrance of the development is clearly visible from the street edge, and major views toward the Subject Property from I-270 will outwardly project a sense of place to potential visitors. At this location, the permitted uses are appropriate for the character envisioned by the Master Plan and compatible with the surrounding uses. These locations provide access to the buildings from adjoining sidewalks and parking facilities, while also creating adequate distance between neighboring residential properties. The building frontages provide a strong retail presence in conjunction with the Gosnell Property. The streetscape and slows vehicular traffic entering the traffic circle. The buildings and structures do not pose any safety concerns for the development. The Planning Board finds the locations of the buildings and structures to be adequate and efficient.

b. Open Spaces

The open space and forested buffers are primarily located along the edges of the Subject Property, between the residential uses (toward the west and south) and I-270 (toward the east). The stream valley buffer is located at the center of the Property and serves as an important organizational feature. The forested edges and natural landscape provide a screen for the parking facilities. Open space areas include, but are not are not limited to, the stream valley buffer, the tot lot

⁶ Per the Zoning Ordinance effective October 30, 2014, Sections, 6.8.1 Alternative Compliance and 6.2.3G (2a) Calculations of Required Parking, the Applicant is approved for a parking reduction of approximately 62 spaces (2.8%) due to site constraints and existing steep grades.

⁷ The electric car charging stations will be phased over time, as deemed necessary with future development phases. Four (4) stations will be constructed in Phase 1, and twenty (20) stations are planned for the future.

and the public plazas. The open spaces adequately and efficiently address the needs of the retail tenants and consumers; while also providing a safe and comfortable environment for pedestrians.

c. Landscaping and Lighting

Foundation plantings are located near the building edges and are integrated into the design of internal pathways throughout the shopping center. The foundation plantings, building's facades, pavement patterns and public artworks enrich the pedestrian environment and encourage a colorful pattern that supports the way-finding system. Shade trees and lighting are provided along the drive aisles and within the parking facilities further enhance the pedestrian environment. Interior lighting will create enough visibility to provide safety, but not so much as to cause glare on the adjacent roads or neighboring properties. The landscaping, lighting and site details adequately and efficiently address the needs of the retail tenants and consumers; while also providing a safe and comfortable environment for pedestrians.

d. Recreation Facilities

Recreational facilities are not required for this Site Plan application, but a tot lot, an amphitheater, seating areas, a hiker/biker trail and bicycle facilities are provided.

e. Vehicular and Pedestrian Circulations Systems

The 30-foot internal road network was designed to bring vehicular traffic from the traffic circle into the Subject Property; while providing adequate stacking distance off of the main roadway. The driveway (i.e. Premium Outlets Drive) has been designed as a private street. The internal roadway loops the entirety of the Subject Property and connects into a secondary access point off of Cabin Branch Avenue. A shared use path will run along the south side until it reaches the amphitheater (at the southern terminus).

Parking facilities are provided on surface lots (during phase one), and are accessed off of Premium Outlets Drive. The internal loop continues throughout the Subject Property and connects into the backside of the retail buildings (directly adjacent to I-270). The surface parking facilities along the backside of the buildings will be primarily used by employees. In future development phases, it is anticipated that surface parking facilities will be converted into structured parking and new buildings will be constructed on surface lots.

While RideOn services are not currently available to the Subject Property, Phase I of this development anticipates the need for public transit facilities by providing parking spaces for bus/shuttle services and three (3) different drop-off areas in close proximity to the public amenities.

Bicycle and pedestrian connectivity between Clarksburg Road (the first roundabout), Cabin Branch Avenue (second roundabout) and the southernmost portion of the Property provide another sustainable circulation system for local residents and visitors. An 8-foot hiker/biker trail and pedestrian pathways are separate from vehicular systems, and integrated along the perimeter of the stream valley buffer and Premium Outlets Drive. Pedestrian sidewalks are oriented parallel to the parking stalls and provide an efficient connection to the open space areas, public facilities and commercial/retail spaces.

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

The Master Plan envisions the establishment of highly desirable employment areas, without limiting specific employment uses. Office developments are considered more successful when the placemaking characteristics include venues for retail, public art and culture, aesthetic appeal, recreational opportunities and connections to housing resources. With that in mind, the development is compatible with other uses and Site Plans (existing and proposed) adjacent to this development. It has been designed with a strong emphasis on four planning principles: 1) Neighborhood Location and Placemaking, 2) Linkage and Pedestrian Orientation, 3) Compatibility and Energy Conservation, and 4) Environmental Protection and Conservation.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

MCDPS Special Protection Area Review Elements

MCDPS has reviewed and approved the elements of the SPA Final Water Quality Plan ("FWQP") under its purview in a letter dated September 30, 2014.

The Planning Board responsibility is to determine if environmental buffer protection, special protection area ("SPA") forest conservation and planting requirements have been satisfied.

Planning Board SPA Review Elements

In acting on a preliminary or final water quality plan the Planning Board is responsible to review:

- (i) Compliance with the Environmental Guidelines;

- (ii) Impervious Surfaces;
- (iii) Forest Conservation;

Environmental Guidelines

The Subject Property is located within the Clarksburg SPA and the Little Seneca Creek watershed, a Use Class IV-P watershed. The Countywide Stream Protection Strategy rates streams in this watershed as good overall quality. There are streams, floodplains, wetlands, and environmental buffers on site.

The overall project is in compliance with the Environmental Guidelines and the previously approved FFCP with two exceptions. There are two areas of minor grading (a 0.1 acre (Area A) and 0.2 acre (Area B)) that are comprised of 3:1 grading tie-outs in an unforested and tilled area of the stream valley buffer. The grading is a result of the enhanced green space corridors and environmental site design features near these two locations. Avoiding these grading tie-outs would result in less internal green space in the surface parking area. The grading tie-outs do not impact forested areas and will be reforested and placed in a Category 1 conservation easement.

The Planning Board finds that the temporary impacts to unforested stream valley buffer combined with the additional internal open space provided by the minor encroachments provides for a better overall condition.

Imperviousness

The Subject Property is located within a section of the Clarksburg SPA with no impervious surface cap or limit. However, a main goal of all SPA's is to reduce the overall impervious footprint of new development within SPA boundaries. As part of the original Preliminary Water Quality Plan, and the revised Preliminary Water Quality Plan for the Cabin Branch Development, a goal of less than 45% imperviousness was established.

This Site Plan indicates an impervious level of approximately 42.7% with approximately 35.99 acres of impervious surface and is therefore consistent with the approved and Revised Preliminary Water Quality Plan. The Cabin Branch Development is on course to remain below an aggregate level of 45% imperviousness for the entire 535-acre development.

Final Forest Conservation Plan

The entire 535-acre Cabin Branch Development has a Final Forest Conservation Plan ("FCP") which was approved with the Infrastructure Site Plan. The FCP was designed to allow for the grading and installation of roads, utilities, and public amenities such as school and park sites. The intent of having one FCP

was to ensure that as this multi-phased project developed, portions would not be left uncovered by an individual FCP and the whole project would remain in compliance with the Montgomery County Forest Conservation Law. Consistent with conditions 1 and 14(c) of the Infrastructure Site Plan (82005015B), the FCP for the overall Cabin Branch Development and the Infrastructure Site Plan are being amended through this Site Plan.

The FCP includes seven worksheets separated by zones or land uses: MXPB-Employment, RMX-1/TDR, MXPB-Residential, Water Tower Storage Facility, Linthicum West, "offsite Area A", and West Old Baltimore Road- MDR Category (Limited to Culvert #2 improvements). Each individual site plan application is submitted with final grading and design, the FCP and the worksheets associated with that particular site plan will be updated to reflect final design and grading details. The FCP indicates that the individual applicants for each site plan area must meet the forest conservation worksheet requirements through a combination of on-site forest retention, on-site planting of unforested stream buffers, landscape credit, and off-site planting within the Clarksburg SPA.

Under the M-NCPPC implementation of the SPA regulations, the Environmental Guidelines require accelerated reforestation of the SPA stream buffers and that any unforested portions of the stream buffer be afforested above and beyond the standard forest conservation requirements. Since the Cabin Branch Development includes land both in and out of the SPA and the tributaries drain to a common water body, Planning Board is treating the planting requirements as if the entire development is located within the Clarksburg SPA. Conditions 1 and 14 of the Infrastructure Site Plan (82005015B) require the Applicant to plant the stream buffers in accordance with the FCP including the Planting Phasing Plan and provide a five-year maintenance period for all planting areas credited toward meeting the FCP worksheet requirements.

Clarksburg Premium Outlets at Cabin Branch

To reflect the new design for the retail shopping center, this Site Plan will require revisions to 21 sheets (1-11, 13-16, 46, 57, 58, 62, 63, and 63A) of the approved FFCP.

The revision to the FFCP not only update the plans to show the new layout and design of the retail shopping center portion of the Cabin Branch Neighborhood, but also updates the plans to show additional areas of forest retention and planting that became available based on the final design.

The final design of the retail shopping center portion of the Cabin Branch Neighborhood FFCP managed to retain an additional 0.30 acres of existing forest and provided an additional 1.02 acres of onsite afforestation.

Additional Forest Conservation Issues

This FFCP amendment includes a resolution for the reconciliation of a pending forest conservation easement violation related to the adjacent Kenney residence, located at 13621 West Old Baltimore Road.

On Nov. 28, 2014, Cabin Branch Management, LLC received a Notice of Violation related to an encroachment by the Kenney residence consisting of a concrete driveway extending from the Kenney residence onto part of the Cabin Branch property in an area encumbered by a Category 1 conservation easement. The encroachment was installed after the survey of the phase 3 Category 1 conservation easement.

Upon receipt of the Notice of Violation, Cabin Branch Management, LLC notified the owners of the Kenney residence to cease mowing activity.

Cabin Branch Management, LLC agreed to have a split rail fence installed along the effected property boundaries between the Kenney residence and the Cabin Branch property, to stop any further encroachment, and to clarify the limits of the conservation easement. Cabin Branch Management, LLC further agreed that the next FFCP amendment for Cabin Branch would include revisions to remove the easement and associated planting within the encroachment area and replace the removed easement and planting area elsewhere on the Cabin Branch property. The future record plat that covers this area will also reflect the revised easement delineation, consistent with and as permitted by section 17 of the Cabin Branch Category 1 easement agreement.

The FFCP amendment shows the release of 1,261 sf. of conservation easement where the encroachment occurs, (planting area K, stage I) and expansion of planting area K by 1,261 sf. Appropriate documentation will be submitted, processed and recorded concurrent with an additional Category 1 easement for the replacement area.

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

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

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 23 2014 (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 Dreyfuss, seconded by Commissioner Fani-Gonzalez, with Vice Commissioner Wells-Harley, voting in favor, and Chair Anderson and Commissioner Presley absent, at its regular meeting held on Thursday, December 18, 2014, in Silver Spring, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board

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

TO: Gwen Wright, Planning Director

VIA: Kipling Reynolds, Area 3, Chief

FROM: Richard Weaver, Area 3, Supervisor
Molline Jackson, Area 3, Senior Planner

SUBJECT: **Administrative Site Plan Amendment No. 82014016A: Clarksburg Premium Outlets at Cabin Branch** (previously approved for the construction of 450,000 square feet of commercial development (including retail and restaurant uses); located at the intersection of I-270 and Clarksburg Road; on 84.24 acres of land zoned MXPDP; within the Clarksburg Master Plan).

RECOMMENDATION

Staff recommends approval of Amendment No. 82014016A.

PROJECT DESCRIPTION

On August 3, 2015, Simon/Clarksburg Development, LLC. ("Applicant") filed an application to amend the Certified Site Plan No. 820140160. The application was accepted as an administrative amendment in accordance with Section 59-D-3.7(d) of the Zoning Ordinance and designated Site Plan Amendment No. 82014016A ("Amendment"). The Amendment requests approval of the following modifications:

- 1) Revise the Grading Plan to accommodate a surplus of fill material on-site that results in additional retaining walls and heightened retaining walls
- 2) Update the Site Plan to reflect changes to the SWM (approved by DPS)
- 3) Revise crosswalk locations
- 4) Modify the surface parking facilities located near the restaurant uses (Buildings A and B on the plan)
- 5) Add a dumpster location at the rear of Building 300
- 6) Revise the Landscape Plan

DISCUSSION

As required, the Applicant placed proper signage on the property and sent notices regarding the Amendment to all required parties on August 4, 2015. The notice gave interested parties 15 days to review and comment on the contents of the Amendment. Staff did not receive any correspondence from the interested parties.

FINDINGS

In accordance with the Montgomery County Zoning Ordinance: Section 59-D-3.7(d), Staff finds that the Site Plan Amendment meets the following:

- (1) The Amendment does not:
 - a. Increase the building height
 - b. Increase the floor area
 - c. Increase the number of dwelling units
 - d. Prevent circulation on any street or path

- (2) The Amendment modifies one or more of the following elements of the approved Site Plan:
 - a. A parking or loading area
 - b. Landscaping, a sidewalk, recreational facilities, public use space, or green area in a manner that does not alter basic elements of the plan; or
 - c. Any other plan element that will have a minimal affect on the overall design, layout quality, or intent of the plan.

SUMMARY

The modifications proposed in this Amendment will not adversely impact the original intent of the Certified Site Plan and conforms to the findings listed above. This Amendment does not increase the physical height of the buildings or the total floor area on the project. As a result of a soil (i.e. fill) surplus on the Cabin Branch site, the Applicant is proposing to use the fill on-site to raise the elevation of the entire Clarksburg Premium Outlets site. This modification impacts the Grading and Landscape Plans. As a result of raising the elevations additional retaining walls are needed near the surface parking facilities and along the perimeter of the property. The total height of the retaining walls will not exceed 10 feet.

The retaining walls proposed along the perimeter of the site will raise the southern end of the site up, which creates a more level surface for SWM facilities and the parking facilities. The retaining walls will not be visible from the interior of the development or along the major roads. The retaining walls and fill will ultimately elevate the surface parking facility and amphitheater approximately eight to 10 feet from the approved grades on the current plans.

3

Other retaining walls, located between the entrance driveway and the surface parking facility, will be a maximum of two feet tall. These walls are necessary to support the main entrance drive, surface parking facilities, and various SWM facilities. The redesign of the surface parking facility (near the restaurant uses in Buildings A and B) will result in the elimination of some landscaped islands; however, the requirement for internal landscaping within the surface parking facility (Section 59-E-2.73) still exceeds the five percent minimum. The surface parking facility is adequately buffered from the entrance driveway with the combination of shade trees, evergreen shrubs and groundcover in addition to the two-foot tall retaining walls. These modifications result in changes to the Landscape Plan.

Staff also recommends removal of the pedestrian crosswalk near the dumpster, because there is a second crossing (approximately 300-feet north) that is more centralized, safe, and efficient. With the exception of this minor change to the pedestrian circulation, the overall circulation is consistent with the previous approvals.

The Department of Permitting Services-Water Resources Division has reviewed and approved the changes to the SWM facilities. The parking facilities, lighting, and landscape plans will be updated to reflect the revisions proposed by this Amendment.

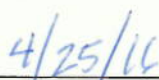
CONCLUSION

Staff recommends approval of the Certified Site Plan Amendment No. 82014016A in accordance with the required findings. This Amendment will be validated upon certification of the Site Plan drawings and remains valid as provided in Montgomery County Code § 59-D-3.8. The Applicant is responsible for submitting an amended Site Plan for the specific modifications.

ACCEPTED & APPROVED BY:



Gwen Wright, Planning Director



Date Approved



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

MCPB No. 18-046
Site Plan No. 82014016B
Clarksburg Premium Outlets at Cabin Branch
Date of Hearing: June 14, 2018

JUL 03 2018

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, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on December 23, 2014, the Planning Board, by Resolution MCPB No. 14-112, approved Site Plan No. 820140160 for 450,000 square feet of retail and restaurant uses, parking facilities and public amenities on 84.24 acres of MXPB zoned-land, located south of the intersection of I-270 and Clarksburg Road, Lots 1, 3 & 4 and Parcels A & B, Block AN recorded by Plat No. 25001, ("Subject Property"), in the Clarksburg Policy Area and the 1994 Clarksburg Master Plan & Hyattstown Special Study Area ("Master Plan") area; and

WHEREAS, on April 25, 2016, the Planning Director approved administrative Site Plan No. 82014016A for minor modifications related to site grading, stormwater management facilities, crosswalks, surface parking facilities, a dumpster location, and the landscape plan; and

WHEREAS, the Cabin Branch Development is also subject to that Infrastructure Site Plan and Final Water Quality Plan No. 820050150, as amended ("Infrastructure Site Plan"), which, in accordance with Conditions 1 and 14(c) of Site Plan No. 82005015B, is further amended through approval of this Site Plan; and

WHEREAS, on August 31, 2017, Simon/Clarksburg Development, LLC ("Applicant") filed an application for approval of an amendment to the previously approved site plan(s) for approval of the following modifications:

1. Remove the median within the main loop access drive (condition of approval 13.c.i. of Site Plan No. 820140160);
2. Improve the promenade hardscape layout, materials, and finishes;
3. Update the landscape plan and site furnishing;
4. Make minor revisions to the site details and retaining wall adjustments; and
5. Revise the approved playground equipment to match the as-built conditions; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 82014016B, Clarksburg Premium Outlets at Cabin Branch ("Site Plan," "Amendment," 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 June 1, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 14, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on June 14, 2018, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; seconded by Commissioner Fani-Gonzalez; with a vote of 4-0, Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor, and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board adopts Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 82014016B, subject to the following revision to Condition No. 13.c.i of Site Plan No. 820140160 and two new conditions:¹

Revisions to Previous Conditions

13. Transportation

- c. The Certified Site Plan must show the internal circulation as private drive aisles.
 - i. The Applicant must construct a private drive aisle (labeled as "Premium Outlets Drive") from the main entrance at Clarksburg Road (MD 121) to the southern end of the site that terminates at the

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.

amphitheater as shown on the Certified Site Plan. This drive aisle will consist of travel lanes that will be at least 12-feet wide and will vary between 1 and 2 lanes in each direction. Sections of this drive aisle will contain a raised median or striped pavement as indicated on the Certified Site Plan. A shared use path will be accommodated within Premium Outlets Drive as indicated on the Certified Site Plan from the private drive aisle connecting to Cabin Branch Avenue to the proposed amphitheater.

New Conditions

1. Site Plan Conformance

The proposed development must comply with the conditions of approval for Site Plan 820140160 as listed in MCPB Resolution No. 14-112, and as amended, except as amended by this application.

2. Certified Site Plan

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

- a) The Applicant must provide Staff with a playground safety certification from a Certified Playground Safety Inspector (CPSI). Any minor revisions suggested by the CPSI may be incorporated in the Certified Site Plan subject to Staff approval.
- b) Revise the plan drawings to correct legibility issues, sheet detail references, and inconsistencies between drawings as indicated by Staff in ePlans.

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

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Clarksburg Premium Outlets at Cabin Branch, 82014016B, 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 set forth in the Staff Report, which the Planning 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments, and all findings not specifically addressed remain in effect.*

- 2. The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

Pedestrian and vehicular circulation systems

The replacement of raised, planted medians with pavement striping and reconfiguration of lanes along the mall access road improves vehicular circulation. As originally designed and installed, the road would have been difficult for buses and trucks to navigate without running onto the medians, and a disabled vehicle would have completely blocked traffic in one direction. The revised access road adequately addresses these issues and is both safe and efficient.

Landscaping

The landscaping modifications, including improvements to the hardscape layout, materials, and finishes; updates to the landscape plan and site furnishings; and revisions to the site details and retaining wall adjustments, are minor and will not adversely impact the original intent of the Certified Site Plan and conform to the findings of that Plan, as amended. The revised landscaping remains adequate, safe, and efficient.

Recreation facilities

The modifications to the playground equipment and layout are adequate, safe, and efficient as conditioned. Although the equipment is different, it still accommodates a range of activities for similar age-groups of children.

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

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JUL 03 2018 (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 Fani-González, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, June 28, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board

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Resolution No.: 17-1002
Introduced: February 4, 2014
Adopted: February 4, 2014

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION DPA 13-02 FOR A DEVELOPMENT PLAN AMENDMENT of LMA G-806, Previously Approved by the District Council on September 9, 2003, in Resolution No. 15-326; Robert Harris, Esquire, and Steve Robins, Esquire, Attorneys for the Applicant, Adventist Health Care, Inc. and Cabin Branch Commons, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 02-00016905, 02-00016916 and 02-00022666

OPINION

The Applicants, Adventist Health Care, Inc. and Cabin Branch Commons, LLC, filed the Development Plan Amendment (DPA) on March 7, 2013, seeking to amend the development plan approved by the District Council on September 9, 2003. The original development plan (Exhibit 21(f)) permitted a maximum of 2,300,000 square feet of office, 120,000 square feet of retail, 75,000 square feet of public uses, 1,139 dwelling units, and 500 senior dwelling units on 283.5 acres in the MXPD Zone. The Applicants seek to increase the amount of retail to 484,000 square feet and reduce the amount of office to 1,936,000 square feet in order to develop a retail outlet center on the northeastern portion of the property. No changes are proposed to the amount of residential and public uses.

Technical Staff recommended approval of the DPA, as did the Planning Board. Exhibits 50-52. The public hearing was held on July 29, 2013 (Exhibit 18), and was continued to August 12th and 14th, September 4th, 6th, and 12th, and October 10th and 15th, 2013.

The Hearing Examiner issued her Report and Recommendation on December 9, 2013, which is incorporated herein by reference. The Hearing Examiner recommended approval of the application subject to the following condition:

The Applicants must submit a revised Preliminary Water Quality Plan (PWQP) in accordance with Chapter 19 of the Montgomery County Code that reflects the development plan approved in this case. If the revised PWQP necessitates any changes to the development plan amendment that are inconsistent with the approved plans, the Applicants must seek a further development plan amendment to effectuate those changes.

Mr. Paul Whit Cobb appeared at the public hearing in this case in opposition to the

application (8/14/13 T. 163-216) and filed a request for oral argument before the Council after the Hearing Examiner's decision was issued. On January 28, 2014, the Council granted his request for oral argument, extended the time for a decision in this case to February 25, 2014 (Council Resolution 17-984), and scheduled oral argument for February 4, 2014. Oral argument before the District Council occurred on February 4, 2014. Having carefully considered the oral arguments from Mr. Cobb, and responding arguments from the Applicants, the District Council hereby approves the application, subject to the condition recommended by the Hearing Examiner, for the reasons that follow.

The Property, Surrounding Area and Zoning History

The subject property consists of 283.5 acres within the Mixed-Use Planned Development (MXPD) Zone. It is part of a larger 535-acre tract designated as the "Cabin Branch Neighborhood" in the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (Master Plan or Plan). This larger neighborhood is located southwest of the I-270/Clarksburg Road (Md. 121) interchange and is bounded by I-270 to the east, Md. Route 121 to the north and west, and Old Baltimore Road to the south. The subject property comprises roughly the eastern half of the neighborhood. The area of the neighborhood outside of this DPA is zoned RMX-1/TDR, portions of which have approved residential site plans although no houses have yet been developed. 7/29/13 T. 96-97

The boundaries of the development plan amendment generally are I-270 to the east, Md. Route 121 to the north, a planned roadway (labeled "Broadway Avenue" on the DPA) to the west, and Old Baltimore Road to the south. A small portion is located north of the old Clarksburg Road, and is referred to as the "Gosnell Property," which has an approved site plan for a small "highway commercial" development, including a bank, hotel, gas station, car wash and convenience store. 8/12/13 T. 86; 8/14/13 T. 227.

The majority of the property is within the Clarksburg Special Protection Area and the Little Seneca Creek watershed. There are two stream valleys within the larger Cabin Branch neighborhood, one of which is parallel to I-270 and falls within the subject property. The property is currently being farmed, although some clearing activities are occurring on properties that have received site plan approval. *Id.* at 5-6.

The larger Cabin Branch neighborhood as well as the subject property has already received several land use approvals. These include a 2004 preliminary plan approval, which was amended in 2008, a Preliminary Water Quality Plan approved in conjunction with the 2003 rezoning to the MXPD Zone, a site plan for roads and other infrastructure, and a Final Water Quality Plan (FWQP) and Final Forest Conservation Plan (FFCP) approved in conjunction with the infrastructure site plan. Exhibits 50, p. 22, 122(b).

Technical Staff defined the surrounding area by using the boundaries applied in the original rezoning (i.e., LMA G-806). These were I-270 to the east, an undeveloped I-3 zoned parcel adjacent to the Clarksburg Detention Center to the north, Ten Mile Creek to the west, and Black Hill Regional Park and the Linthicum West property to the south. Exhibits 50, p. 6. None of the parties dispute this delineation.

Much of this area has not yet developed. The properties located along Old Baltimore Road and Clarksburg Road consist of single-family detached homes and farms. Black Hill

Regional Park is located immediately south of Old Baltimore Road. Although not within the defined neighborhood, Comsat and the Gateway I-270 Business Center are directly across from I-270. Exhibit 50, p. 6. While not yet developed, portions of the property (primarily to the west of the site) have already received site plan approval for construction of single-family detached homes and townhouses. Exhibits 50, p. 41, Exhibit 109.

The Hearing Examiner concluded that it is more appropriate to characterize the neighborhood by these approved uses rather than the existing farming activity. The Council agrees and thus finds that the neighborhood is characterized by a mix of residential uses, primarily on the western portion of the site and the neighborhood, older single-family homes, limited farming activity along Clarksburg and Old Baltimore Roads, and employment along I-270.

Proposed Development and Binding Elements

The DPA includes 2.42 million square feet of commercial development, broken down into 484,000 square feet of retail, and 1.936 million square feet of office. It also calls for 75,000 square feet of public uses, and 1,139 dwelling units that are a mix of townhouse, single-family detached and multi-family units, as well as 500 age-restricted units. Exhibit 132(c). This density is divided into four areas, labeled Areas A through D on the DPA. The DPA lists the mix of uses permitted in each area as well as the maximum amount of permitted density for each use. The DPA does not have any minimum required densities for either retail or office, although there are minimum and maximum ranges for some of the residential uses. Area A, the location of the outlet center, may have approximately 1 million square feet of development that will include the outlet center, and may include a hotel, banks, entertainment uses, restaurants, and live/work and multi-family dwelling units. This mix includes the retail on the Gosnell property. 7/29/13 T. 114-115. Area B may have up to 100 single family detached dwellings, between 150 and 325 single-family attached dwelling units, up to 300,000 square feet of office, and up to 150,000 square feet of retail, along with a maximum of 7,500 square feet of public uses and between 150 and 500 senior dwelling units.

The uses permitted in Area C include up to 100 single-family detached dwelling units, 425 single-family attached dwelling units, between 150 and 350 multi-family dwelling units, up to 1,425,000 square feet of office and up to 30,000 square feet of neighborhood retail. Area D will contain primarily office, but may also include up to 50 single-family detached units, 50 single-family attached units, 100 multi-family units, 10,000 square feet of retail, 20,000 square feet of public uses, and 100 senior dwelling units. Exhibit 132(c).

The DPA proposes 11 binding elements, which are fully set forth in the appendix attached hereto and incorporated herein. All but two of these binding elements are from the original development plan approved with LMA G-806. Two new binding elements were added to address concerns that arose during the public hearing process. The Planning Board recommended a binding element limiting the gross floor area of individual stores to 50,000 square feet to reduce the possibility that, if this DPA were not implemented, big box users would locate on the property and compete with the neighborhood center planned for the Town Center District. Exhibit 52. The second responds to concerns surrounding the potential that little to no neighborhood retail is required in the Cabin Branch neighborhood. This binding element mandates that all of the retail developed in Area C must be neighborhood-serving retail. The Council, however, agrees with the

Hearing Examiner that this binding element does not mandate any neighborhood retail development because there is no required minimum.

The neighborhood “core” envisioned by the Applicants will be along the Wellspring Avenue “greenway.” The greenway consists of a 30-foot wide landscaped lawn area to the side of the paved road. Wellspring Avenue connects an elementary school and local park to the outlet center and eastern stream valley. It will contain sidewalks as well as a meandering path and will provide a visual opening to the stream valley buffer at the intersection of Wellspring and Cabin Branch Avenue that continues into Area B and A. 8/14/13 T. 230. Along the greenway are a series of nodes, particularly in the mixed use area. These nodes will include the amphitheater, stream valley, and the plaza within the retail outlet center, and continue through the retail in Area B. Churches and daycare centers may also be included in Area B. 9/4/13 T. 82-84.

The first phase of construction will be the retail and employment uses in Areas A and B, followed by construction of parks and open space areas in Areas B and C, then by employment and retail in Area C. The General Notes included in the DPA state that development of the MXPB area will be coordinated with development of the RMX-zoned western portion of the site. Exhibit 132(c).

Standards of Review

Sections 59-D-1.61 and 59-D-1.7 of the Zoning Ordinance require the District Council, before it approves any application for re-zoning to a MXPB Zone or an amendment to a previously approved development plan in the MXPB Zone, to consider whether the application, including the development plan, fulfills the “purposes and requirements” set forth in Code Section 59-C of the Zoning Ordinance. In making this determination, the law expressly requires the District Council to make five specific findings, “in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification.” *Montgomery County Zoning Ordinance*, §59-D-1.61.

The five specific findings required by §59-D-1.61 the Zoning Ordinance are:

(a) *T[hat t]he zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies. [The remaining language of this provision addresses height and density issues not at issue in this case; it is therefore not quoted here.]*

(b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable*

requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to the County, all zoning power must be exercised to:

- (1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;
- (2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and
- (3) protect and promote the public health, safety, and welfare. *Md. Land Use Article Code Ann.*, § 21-101(a)(4)(i).

Thus, there are six findings required (§59-D-1.61(a) through (e) and the public interest).

Compliance with the Master Plan

The Council finds, as did the Hearing Examiner, the Planning Board and Technical Staff, that the DPA substantially complies with the recommendations of the Master Plan. In Maryland, master plans are treated as flexible guides in zoning cases unless a statute elevates them to the status of a regulatory device. *The Maryland National Capital Park and Planning Commission v. Greater Baden-Aguasco Citizens Association*, 412 Md. 73, 98 (2009). In this case, neither the Zoning Ordinance nor State law does so. The Master Plan itself recognizes that “circumstances will change following adoption of a plan and ...the specifics of a master plan may become less relevant over time.” *Plan*, p. vii. The *2011 Limited Amendment to the 1994 Master Plan* (2011 Limited Amendment) expressly reaffirmed 10 key policies in the 1994 Plan for guiding development in Clarksburg, but did not explicitly reaffirm compliance with all of the Plan’s specific recommendations.

The Plan envisions Clarksburg as a transit- and pedestrian-oriented town surrounded by a natural setting. Exhibit 60(a), p. 16. It attempts to balance the residential and employment densities necessary to support transit against the desire to maintain a “town-scale” of development. To further this goal, ten key planning policies are set forth early in the Plan to guide in achieving this balance. Policy 1 (entitled “Town Scale of Development”) directs 80% of residential densities to the Town Center District and “a series of transit-oriented neighborhoods.” *Id.* According to the Plan, important to the “town scale” concept is to create an identity for

Clarksburg “separate from Germantown or Damascus.” *Id.* The Plan’s strategy incorporates the Historic District as part of an expanded Town Center and seeks to maintain the Town Center’s historic function as the center of community life for the larger Clarksburg area. The Plan identifies the location of a grocery store in the Town Center as “critical” to its vitality. *Id.* at 46.

The Plan also reaffirms the role of I-270 as a high-technology employment corridor. *Id.* In addition to the COMSAT and Gateway I-270 sites identified in the Plan, the Plan identifies the Cabin Branch neighborhood as a major contributor to the employment corridor because of its extensive frontage along I-270. It targets the subject property for a total of 2.3 million of “employment” uses. Exhibit 60(a), p. 64. It also recommends 120,000 square feet of retail, as well as public and residential uses. *Id.*

The Plan recognized a major challenge to achieving its vision--how to make future residents “feel part of a larger community.” The tool (or “building-block”) used to meet that challenge was to organize development into “neighborhoods,” characteristics of which are described in Policy 7, entitled “Transit- and Pedestrian-Oriented Neighborhoods.” *Id.* at 28. Cabin Branch is one of the neighborhoods identified in the Plan. This policy calls for a mix of uses in each neighborhood to encourage pedestrian travel and reduce dependency on the automobile. Core uses necessary for a successful neighborhood, according to the Plan, include retail, employment, open spaces, schools and housing. Retail and employment uses are to be at “a pedestrian scale and oriented to the needs of the residents.” *Id.* Recommendations for the locations of these neighborhood cores are included in the Plan. *Id.* at 54, 66-68. Grocery stores in particular are recommended for the Town Center and Cabin Branch, and one is being built in Clarksburg Village.¹ *Id.*; 9/4/13 T. 98.

The parties agree that current office market will not support the large amount of office space recommended for Clarksburg in the 1994 Plan, a fact recognized by the Planning Board in the 10-Mile Creek Limited Amendment. *10-Mile Creek Limited Amendment to the 1994 Clarksburg Master Plan & Hyattstown Special Study Area*, p. 3, October 2013 (10-Mile Creek Limited Amendment). In addition, the Applicant presented extensive expert testimony that the Clarksburg area can no longer support three grocery stores given market changes in the industry. 9/4/13 T. 53-54

The District Council finds that the DPA furthers the primary goals of the Master Plan - preservation of locations for large office developments and the Plan’s core goal to protect the viability of the Town Center as the community focus for the entire area. The Applicant’s expert in market analysis testified extensively that more office development will occur with the outlet center than without it, and that the mix of uses in the DPA is needed to attract office development. Similarly, the record contains significant testimony that changes in the grocery store market, including the introduction of very large food retailers like Wal-Mart and Target into areas nearby, significantly reduced the demand for additional grocery stores in Clarksburg. Because this DPA eliminates the possibility of a full-service supermarket within Cabin Branch, the expert testified that it will strengthen the viability of a neighborhood center within the Town Center District anchored by a grocery store.

¹ The “Clarksburg Village” is the current name of the “Newcut Road” neighborhood identified in the Master Plan.

The Applicant argues that the Town Center neighborhood center was only to be the central focus of the Town Center District and not the entire study area. The Council interprets the Plan to prioritize development of the Town Center as the center of community activity for the Clarksburg study area and not solely the Town Center District. The central role of the Town Center in the development of Clarksburg is reinforced in many places in the Plan. These include the desire that the Historic District continue its historic function as the center for community life, to concentrate civic uses there, to locate a transit stop there, and to prioritize its development as a model for community identity. This is reflected in the Plan's staging priorities as well. Development of the Town Center District is recommended before development of employment locations to create community identity in the Town Center that could be modeled in other neighborhoods.

Those in opposition argue that the retail and civic uses proposed in the DPA will compete with the retail and uses called for in the Town Center, thus delaying development of the Town Center District. The Council finds that the regional outlet center will *not* usurp the central function of the Town Center, as did the Hearing Examiner. The expert testimony in this case supports this finding. While land use experts for those in opposition testified that simply having night-time activities such as restaurants, entertainment, and civic uses (such as the amphitheater) usurped the Town Center's central role, the Applicant's expert in market analysis testified that the retail in the outlet center would not compete with the type of retail contained in the Town Center neighborhood center or the "infill" retail in the Historic District. There is no expert evidence that the retail outlet center precludes other civic and community building uses that may create a community identity in the Town Center, such as a library or a farmer's market. Rather than harming the Town Center District, both the Applicants' expert and the developer of the Town Center neighborhood center agree that the retail outlet will generate new activity in the Town Center, both for those looking for a different type of retail experience and from employees of the center. While neighborhood-serving retail, other than uses that overlap with the outlet center, such as chain restaurants, may not occur in the Cabin Branch neighborhood in the amount or at the type of "core" location envisioned by the Plan, the Council finds that the alternative neighborhood core provided by the DPA satisfies this goal of the Plan. A single core location for neighborhood-serving retail is only one aspect of Policy 7, the "Pedestrian- and Transit-Oriented Neighborhood." The DPA does incorporate other pedestrian- and transit-oriented goals of the neighborhood, such connected streets, bikeways, and paths to further reduce reliance on the automobile and will include bus routes to connect Cabin Branch to other areas. Further, while the "core" of Cabin Branch may not include the full array of typical neighborhood retail uses, the "neighborhood core" of the DPA contains activities that also achieve community identity. The "linear" core along Well Spring Avenue includes some neighborhood retail uses as well as civic uses and gathering places, such as the greenway and the amphitheater that may achieve the community building goals of the Plan.

As to the requirement that the DPA comply with the land uses and densities recommended by the Plan, the Council agrees with the Hearing Examiner, Planning Board, and Technical Staff that the DPA meets this standard. This is because the overall density of the commercial area (i.e., 2.42 million square feet) remains the same and the residential uses have not changed. While the amount of retail is larger than originally approved, the DPA still preserves 1.936 million square feet of office space, an amount that not may be fully developed for 20 years. Thus, the DPA changes only a minor portion of the total commercial square footage recommended for Cabin Branch. The Council finds that the Plan did not intend to prohibit additional retail because the MXPDP Zone recommended for the property permits up to 20% of the total area to be retail. The

Council interprets the Plan's recommendation for 120,000 square feet of neighborhood retail as the tool used to ensure a viable neighborhood focal point, as that was the "building block" used in the different Clarksburg neighborhoods to create community identity. While this DPA alters the tool somewhat in Cabin Branch, it offers a different building block in the form of gathering places, civic uses and neighborhood retail to achieve the same result. At the same time, the DPA preserves one of the Plan's core goals to protect the neighborhood retail in the Town Center. Given the purpose of the MXPDP Zone to encourage comprehensively planned multi-use centers (*see*, §59-C-7.50(b)), the Council finds that all retail is not limited to 120,000 square feet.

Other County Plans and Policies

Other than Master Plan compliance, none of the parties contend that the DPA conflicts with other County plans and policies. Evidence demonstrates that road improvements will be privately funded and that the DPA has a valid preliminary plan approval. Mr. Chris Turnbull, the Applicants' expert traffic engineer, presented a traffic report studying the impact on weekday peak hour trips and a supplemental analysis for weekend traffic. Both indicated that traffic generated by the development will not exceed congestion levels for the policy area nor will it exceed the number of trips approved in the preliminary plan. Staff advises the 2005 Facility Plan required by WSSC to bring water and sewer to the site is being implemented. Exhibit 50. For these reasons, the Council finds that the DPA will not conflict with the General Plan, the Capital Improvements program, or other County policies.

Compliance with the Purposes and Development Standards of the MXPDP Zone

The Council finds that the DPA fulfills the purposes of the MXPDP Zone, and will provide for the maximum safety, convenience, and amenity of the residents of the development and will be compatible with adjacent development. The first purpose of the MXPDP Zone is:

- (a) To establish standards and procedures through which the land use objectives and guidelines of approved and adopted master or sector plans can serve as the basis for evaluating an individual multi-use center development proposal.

As described above, the Council finds that the DPA substantially complies with the Master Plan.

- (b) To encourage orderly, staged development of large-scale, comprehensively planned, multi-use centers by providing procedures for the submission of a concept plan for an entire site and subsequent development plans for each stage of development, as identified on the concept plan.

While the Applicants chose not to utilize a concept plan, they will coordinate development of the site with other owners in the Cabin Branch neighborhood and have shown the entire neighborhood on the development plan amendment to demonstrate this. This requirement has been met.

- (c) To provide, where appropriate, higher density residential uses integrated into the overall multi-use center.

The DPA locates two multi-family nodes and senior units in proximity to the neighborhood retail and civic uses along Well Spring Avenue and in Area C and D. The multi-family nodes in Area C are located close to open space. The Applicants presented testimony that bus routes will link different areas of the neighborhood and provide a link to the Town Center retail. For these reasons, the Council finds that this purpose of the MXPDP Zone has been met.

(d) To ensure internal compatibility of residential and nonresidential uses by providing a suitable residential environment that is enhanced by the commercial, recreational, employment and institutional amenities within commercial and industrial components of the multi-use center.

(e) To assure compatibility of the proposed land uses with surrounding uses by incorporating higher standards of land planning and site design than could be accomplished under conventional zoning categories.

The Council finds that these purposes have been met because the DPA provides automobile and pedestrian connectivity between all of the uses, it incorporates civic amenities such as greenways and an amphitheater into the commercial uses, and transitions from more intense development close to I-270 to residential townhouse and single-family homes toward the western edge of the property along Cabin Branch Avenue.

(f) To encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial/industrial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation, and social activity. It is also intended that open space and amenities be located so as to achieve the physical and aesthetic integration of the uses and activities within each development. In addition, structured parking within mixed-use planned developments is encouraged to help achieve the open space and amenities objectives of the zone. Where surface parking is necessary, the purposes of this zone may be achieved by the provision of additional landscaping.

The Council finds that this purpose has been fulfilled because the DPA takes advantage of its location near Black Hill Regional Park and provides linkages between the park and the office component. The physical and visual connections to the stream valleys throughout the larger neighborhood, which include parks, trails, and open spaces between buildings, provide opportunities for recreation, relaxation and social activity.

(g) To encourage and provide for the development of comprehensive non-vehicular circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and industrial areas and public facilities.

The Technical Staff report and the Applicant's expert land planner testified that there will be greenways, sidewalks, and bike paths connecting the various uses within the subject property. Exhibit 50, 7/29/13 T. 120-122; 9/4/13 T. 82-84; 8/12/13 T. 106. The Council finds that the interconnected street system designed for pedestrians and the network of bike paths and trails

connecting different areas with each other as well as parks, greenways, bike paths, and natural features fulfill this purpose.

- (h) To encourage and provide for efficient use of energy resources through shared facilities or other economies of scale or technology, including innovative fuels and district heating, etc.

The record shows that the Applicants are aware of this purpose clause and have agreed to explore measures to satisfy its requirements. Exhibit 50. No parties have asserted that the DPA fails to meet this requirement. Based on this evidence, the Council finds that this purpose of the MXPDP Zone has been met.

- (i) To preserve and take the greatest possible aesthetic advantage of existing trees and to minimize the amount of grading necessary for construction of a development.

Technical Staff concluded that this requirement had been met because the DPA conforms to all Forest Conservation Plan, Water Quality Plan and Stormwater Management approvals, which were approved for the overall development of the Cabin Branch community. *Id.* at 22. The Council finds that the application will meet these requirements provided that no changes are required to the limits of disturbance after approval of an amended Preliminary Water Quality Plan.

Development Standards of the MXPDP Zone

None of the parties contend that the DPA fails to meet the development standards of the MXPDP Zone. Staff of the Planning Department concluded that the DPA meets those development standards and sets them out in detail in their reports. Exhibits 50, 52. Based on this evidence, the Council finds that the DPA meets the development standards of the MXPDP Zone.

Safety and Efficiency of Access

The third finding necessary for approval of a development is:

- (c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

The Applicants' traffic study indicates that the approval of the DPA will not adversely affect the surrounding area roadway. The testimony of the Applicants' traffic engineer supports this conclusion. Staff further concluded that the site access, internal circulation and pedestrian facilities shown in the DPA are adequate and safe. Exhibit 50, p. 28. Based on this evidence, the Council finds that this standard has been met, as did the Hearing Examiner.

Environmental Findings

The fourth criterion for approval of the DPA is:

(d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

The Applicants argue that the 2003 Preliminary Water Quality Plan remains valid and need not be revised. Thus, they argue, no further water quality review is necessary until the final development stages (i.e., site plan and building permit). While they acknowledge that some of the stormwater facilities shown on the 2003 Plan may not be built (because of changes to the stormwater management regulations), any revisions will be minor. The expert emphasized that the retail outlet center will not require changes in the Limits of Disturbance (LOD), thus eliminating the need to revisit protection of forest, wetlands, buffers and stream valleys. He stated that there was no change in the imperviousness of the site, and in fact, the imperviousness may be reduced, as this is calculated based on the Limits of Disturbance. He also pointed out that approximately 81% of the subject property has already received final approval for stormwater, and presented expert testimony that there is ample room on the balance of the site to provide facilities meeting the current regulations. 10/10/13 T. 37.

Those in opposition assert that both the Zoning Ordinance and Chapter 19 of the County Code require the Applicant to amend the 2003 PWQP when amending the original development Plan. They point out that the Zoning Ordinance requires the Applicants to include information on water quality treatment on the original development plan:

(i) If a property proposed for development lies within a special protection area, the applicant must submit water quality inventories and plans and secure required approvals in accordance with Article V of Chapter 19. The development plan should demonstrate how any water quality protection facilities proposed in the preliminary water quality plan can be accommodated on the property as part of the project. *Montgomery County Code*, §59-D-1.3(i).

The opposition also asserts that Section 59-D-1.74 requires the Applicants to submit all relevant information required for an original development plan when submitting a development plan amendment. In this case, they argue, a revised PWQP is relevant because the DPA changes the layout and type of development previously approved. Executive Regulations implementing the County Code requirements for stormwater management state that a PWQP must be filed when there is an amendment to a development plan. COMCOR 19.67.01.03.

The two agencies responsible for reviewing PWQPs disagree on whether the 2003 PWQP remains valid. The County Code divides the responsibility for reviewing PWQPs between two agencies, the Planning Board and the Montgomery County Department of Permitting Services (DPS). The Planning Board is responsible for protecting sensitive environmental resources; DPS

reviews the design and adequacy of the stormwater management facilities. The County Code vests final authority for review of a PWQP in DPS, if findings of the Planning Department conflict with those of DPS. *Montgomery County Code*, §19-65(a).

In this case, Technical Staff of the Planning Department advises that the 2003 PWQP approved for Cabin Branch remains valid (Exhibit 122); DPS advises amendments will be required to the PWQP prior to the final development stages (Exhibit 129). Technical Staff points to the extent of environmental approvals already in place for the development, the minor nature of the revisions required, and the additional 14 acres of green area that will be added as a result of the DPA. Exhibit 122.

The Council finds that the PWQP must be revised as required by the regulations, but given the minor nature of those revisions, the Applicants have provided sufficient evidence for the Council to find that all stormwater management regulations may be met under the proposed development plan. As a result, the Council agrees with the Hearing Examiner that it may approve the DPA, subject to the requirement that the Applicants formally revise the 2003 PWQP. If amendments to the PWQP require further revision to the DPA, the Applicants must amend the approved DPA.

Section 59-D-1.3(i) of the Zoning Ordinance requires all development plan applications in special protection areas to contain "water quality inventories and plans and secure required approvals in accordance with Article V of Chapter 19. The development plan should demonstrate how any water quality protection facilities proposed in the preliminary water quality plan can be accommodated on the property as part of the project." *Montgomery County Zoning Ordinance*, §59-D-1.3(i). Chapter 19 of the *Montgomery County Code* specifies these requirements, among which is the approval of a Preliminary Water Quality Plan (PWQP). *Montgomery County Code*, §19-65. Subsequent sections of the Zoning Ordinance make clear that applications to amend an approved development plan must contain all relevant information required for an original development plan, including the water quality information set forth above. *Montgomery County Zoning Ordinance*, §59-D-1.74. Executive regulations implementing the Code specifically require submission of a PWQP for approval when amending a development plan. COMCOR 19.67.01.03.A(ii)

The record demonstrates that a PWQP for the entire site was approved in 2003 in conjunction with the original development plan. A Final Water Quality Plan (FWQP) associated with the infrastructure site plan for the Cabin Branch neighborhood was approved in 2008. The administrative practice in Cabin Branch has been to update the FWQP for infrastructure as individual site plans are approved for the residential development. The Applicants did not prepare a revised PWQP reflecting the proposed use nor did Technical Staff forward the DPA for review by DPS. Technical Staff concluded that the original PWQP remains valid for the development plan amendment. Exhibit 122(b). DPS indicates that revisions to the 2003 PWQP will be required. Exhibit 129.

The Council finds that the applicants meet the provision for providing all relevant information under Section 59-D-1.74 but that the Applicants must get an amended PWQP under Chapter 19 after the approval of the DPA. This requirement remains because the administrative practice used for Cabin Branch does not satisfy the water quality regulations applicable to the DPA. Those in opposition correctly point out that Maryland courts instruct that an administrative

practice cannot substitute for what is otherwise required by law. *County Council of Prince George's County v. Billings*, 420 Md. 84, 103 (2011). Agencies must follow their own rules of procedure. *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503 (2003).

The Zoning Ordinance requires an applicant for a development plan amendment to submit all "relevant" information required for an original development plan application. It also requires the Council to find that all requirements of Chapter 19 of the Code will be met. Executive Regulations implementing Chapter 19 specifically require a revised PWQP for a development plan amendment. Thus, reading the Zoning Ordinance and Chapter 19 together, a revised water quality plan is "relevant" to a development plan amendment, at least where the amendment significantly changes the building layout and design of the original development plan. Because the intent of the new stormwater regulations is to incorporate stormwater management in the initial design of projects, the Zoning Ordinance requires a different development design to be reviewed in the same manner as the original development plan. As the outlet center is designed differently than the hospital and medical offices previously approved, and because the facilities shown on the PWQP are outdated, a revised PWQP is required.

While in some circumstances an agency's interpretation of a statute is entitled to great weight, *see, e.g., Comptroller of the Treasury v. John C. Louis Co.*, 285 Md. 527 (1979), those circumstances are not present here. There is no long-standing agency interpretation applicable to this case because the practice has been applied to other properties in the neighborhood that are consistent with their original approvals (i.e., either the 2003 DPA or the initial approval for the RMX-1 zone properties), thus meeting the requirements in Chapter 19 of the Code. The proposed development here is inconsistent with the initial approval, triggering the requirements for review of water quality in special protection areas.

Second, the County Code divides the responsibility for approval of a PWQP between two lead agencies: the Montgomery County Department of Permitting Services (DPS) and the Montgomery County Planning Board. *Montgomery County Code*, §19-65. These two agencies disagree on whether the 2003 PWQP remains valid. Staff of the Planning Department asserts that it does; DPS states that changes will be required. Thus, there is no coordinated agency agreement that would constitute a "long-standing" interpretation. As DPS is the lead agency for approving the stormwater management concept plan, and that agency has not reviewed this DPA, Council finds that the Applicants must comply with the plain requirements of the Zoning Ordinance and Chapter 19 and submit a revised PWQP reflecting the proposed development.

Because of the expert evidence and testimony from Planning Department Staff (Exhibit 122(b)) and the Applicants' expert civil engineer that revision of the Preliminary Water Quality Plan (PWQP) will not change the site design of the DPA or its limits of disturbance (10/10/13 T. 32), the Council finds it appropriate to require a revision to the 2003 PWQP as a condition of approval, rather than remanding the application until the 2003 PWQP is actually approved. The Hearing Examiner recommended placing the following condition upon the approval of the DPA, with which the Council agrees:

The Applicants must submit a revised Preliminary Water Quality Plan (PWQP) in accordance with Chapter 19 of the Montgomery County Code that reflects the development plan approved in this case (Exhibit 132(c)). If the revised PWQP necessitates any changes to the development plan amendment that are inconsistent

with the approved plans, the Applicants must seek a further development plan amendment to effectuate those changes.

Those in opposition raise similar arguments regarding the 2003 Preliminary Forest Conservation Plan (PFCP) because it has not been updated to reflect the proposed development. Mr. Gary Unterberg, the Applicant's expert in land planning and landscape architecture, testified that the limits of disturbance will not change from that approved in 2003. According to him, the updates are minor and typical of those performed at the Final Forest Conservation Plan (FFCP). 9/6/13 T. 74-76. Planning Department Staff indicates that changes may be required due to elimination of the stormwater management ponds, however, these increase the amount of forested area. As the Planning Board is the lead agency for approving PFCPs and Technical Staff indicates that the DPA conforms to the 2003 PFCP, the Council finds that there is no need to revise the 2003 PFCP. Exhibits 50, 51.

Perpetual Maintenance of Common Areas

The last requirement for approval of a DPA is:

(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

The development plan amendment includes a note carried forward from the original development plan stating that documents assuring perpetual maintenance of common areas would be submitted at site plan. (Exhibit 132(c)). The Applicants correctly point out that the Hearing Examiner in LMA G-806 found this sufficient to meet this finding. 9/6/13 T. 35. The Council finds that this requirement has been met.

The Public Interest

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

Planning Staff, the Planning Board, and the Hearing Examiner have recommended approval of the DPA. Uncontroverted evidence and testimony indicates that the standards for traffic meet the test for adequate public facilities and that water and sewer will be available to serve the proposed development. The Council finds that the DPA substantially complies with the Master Plan. Other than the procedural requirement of submitting a revised PWQP reflecting the proposed development, the only expert testimony here supports a finding that stormwater management for the development may be accommodated in accordance with Chapter 19 of the Code. For the reasons stated, the Council finds that the DPA will be in the public interest.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Development Plan Amendment No. DPA 13-02, seeking to amend the development plan approved by the District Council on September 9, 2003, in Local Map Amendment Application No. G-806 to increase the amount of retail space from 120,000 to square feet to 484,000 square feet and to decrease the amount of office space to 1,935,000 square feet from 2,300,000 square feet, is ***approved***, subject to the specifications and requirements of the Development Plan Amendment, Exhibit 132(c), provided that the Applicants submit to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan Amendment approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance, as required under Code §59-D-1.64, and subject to the following condition:

The Applicants must submit a revised Preliminary Water Quality Plan (PWQP) in accordance with Chapter 19 of the Montgomery County Code that reflects the development plan approved in this case. If the revised PWQP necessitates any changes to the development plan amendment that are inconsistent with the approved plan (Exhibit 132(c)), the Applicants must seek a further development plan amendment to effectuate those changes.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

APPENDIX (Binding Elements)

BINDING ELEMENTS

1. Transferable Development Rights and Moderately Priced Dwelling Units

The property that is the subject of this application (283.5 acres) is part of a larger, mixed-use community planned for 535 acres shown on the Development Plan, of which the Applicants are also owners. The portion of the property not being rezoned MXPB, is zoned RMX-1/TDR and will require the purchase of Transferable Development Rights (TDR's) for the development planned by Applicants. Based on calculations developed with M-MCPPC staff, the total Master Plan residential density for the 535-acre community is 1,676 market rate units plus 210 Moderately Priced Dwelling Units. Assuming this density and the mix of unit types called for in the Master Plan for the entire Cabin Branch Neighborhood (including a maximum of 20% multifamily) the 535-acre project will require 635 TDR's. The Preliminary Plan of Subdivision application(s) for the MXPB area and the remaining RMX-1/TDR area shall require the purchase of TDR's in conformance with this calculation.

2. Off-site Amenities and Features

By the time of issuance of building permits for the 100th dwelling unit in the Cabin Branch Community, which consists of the larger, mixed-use community of 535 acres shown on the Development Plan, the Applicants will dedicate the sites shown on the Development Plan for an elementary school, a local park and a recreation facility. The school site will be rough-graded at a time determined at the earliest Preliminary Plan of Subdivision application for the Cabin Branch Community, subject to Montgomery County Public School approval.

3. Trip Reduction Measures

At the time of Preliminary Plan of Subdivision, the Applicants, M-MCPPC Transportation Planning staff, and Department of Public Works and Transportation (DPWT) staff will consider mutually acceptable trip reductions measures. The parking ratios for non-residential uses in the Cabin Branch Community will be determined at Site Plan, considering trip reduction goals.

4. Street Network

A network of public streets shall be provided, supplemented by private streets, in a grid pattern that promotes interconnectivity. Public streets will consist of Master Plan streets and additional business and residential streets to form blocks that, with the exception of Area D defined on the Development Plan, are substantially similar to the street system shown in the Road Hierarchy Plan of the Development Plan and that are subject to M-MCPPC and DPWT approvals.

5. Area D Street Network

Area D will be designed with a public or private street connecting First Avenue (Route A-304) and Newcut Road (Route A-302) in a grid pattern with a particular emphasis on a building line to frame Newcut Road Extended, with parking in the rear.

6. Street Character

All streets will adhere to a pedestrian-friendly design to the extent practicable, which places particular emphasis on a building line to frame the street, with parking in the rear, excluding retail and entertainment uses. Within the core, pedestrian friendly uses including retail, residential, or office will be located on the first floor. The entire MXPB area will conform to a Cabin Branch Community Streetscape Plan that is designed to integrate the entire community, which will be submitted at Site Plan and is subject to M-NCPPC and DPWT approvals.

7. Special Roads

A-307 will be designed as an open section arterial road with wide green edges to provide a gateway to Black Hill Regional Park, subject to M-NCPPC and DPWT approvals. The rural character of West Old Baltimore Road will be maintained by minimizing environmental impacts and providing generous green edges.

8. Service/Public Uses

Service/Public uses may include up to 500 units for independent living for Senior Adults or persons with disabilities, assisted living, life care, or continuing care.

9. On-street Parking

Applicants will include on-street parking on streets adjacent to retail facilities. (Excluding MD Route 121, Wellspring Street and Goldeneye Avenue.)

10. No single retail store will have a gross floor area that is greater than 50,000 square feet, which will be a condition of site plan approval and will be referenced on the Certified Site Plan.

11. The retail uses located in Area C will be neighborhood retail.