





Resolution No. 15-326  
Introduced: September 9, 2003  
Adopted: September 9, 2003

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

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By: County Council

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**Subject:** APPLICATION NO. G-806 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Robert Harris, Esquire, Jody S. Kline, Esquire and Stephen J. Orens, Esquire, Attorneys  
for Purchasers, OPINION AND RESOLUTION ON APPLICATION  
Tax Account Nos. 02-00016905; 02-00016916; 02-00022666; 02-00020725

**OPINION**

Application No. G-806, filed on December 16, 2002 by Applicants Adventist Healthcare, Inc., FFTM I Limited Partnership and King Farm Partnership, LLP, requests reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPDP Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District. As required under Code § 59-D-1.11, the application was accompanied by a Development Plan with binding specifications related to land use, density, development standards and staging. Development under the MXPDP Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the MXPDP Zone.

The Hearing Examiner recommended approval of the application on the basis that (i) the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance; and (ii) the proposed rezoning and development would satisfy the purposes and standards of the MXPDP Zone, would be compatible with existing and planned land uses in the surrounding area, and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The Applicants seek reclassification of approximately 283.5 acres of land in Clarksburg, which will be referred to as the "subject property." The subject property comprises roughly the eastern

half of a 535-acre tract of land that has been assembled by the Applicants and a fourth party, Winchester Homes, Inc. (together, the "Property Owners"). This 535-acre area forms a triangle abutting Clarksburg Road (MD 121) to the west and north, I-270 to the east and West Old Baltimore Road to the south, and will be referred to as the "Cabin Branch Community." The Applicants propose to develop the entire Cabin Branch Community as a single planned development with residential, employment, retail and service uses. The portion of the Cabin Branch Community outside the subject property is intended to be developed under its existing RMX-1/TDR zoning.

While each of the Property Owners retains the right to proceed with the development of its property independently, the development team approached the whole of the Cabin Branch Community as a single project. As a result, all of the graphical exhibits in the record, including the Land Use Plan that is the central component of the Development Plan, cover the entire Cabin Branch Community. Moreover, the Property Owners intend to present to the Planning Board a single application for preliminary plan approval for the entire Cabin Branch Community. For ease of reference, the Cabin Branch Community as a whole will sometimes be referred to as the "site," and the 251.5 acres not included in the subject property will be referred to collectively as the "west side" of the site.

The subject property is comprised of the 127.7-acre Gosnell parcel (also known as the King Farm Limited Partnership parcel), the 13-acre Faller parcel, and the 142.8-acre Adventist HealthCare parcel, for a total of 283.5 acres. It has approximately 4,000 feet of frontage on I-270, 2,100 feet of frontage on Clarksburg Road, and 1,600 feet of frontage on West Old Baltimore Road. The property is dominated by fields in active agricultural use, bordered by hedgerows, and has several abandoned farm buildings. A stream valley for a tributary of Little Seneca Creek flows through the subject property and is partially forested. The majority of the subject property lies within the Clarksburg Special Protection Area.

The west side of the site (outside the subject property) is developed in a similar fashion, with fields in active agricultural use and a small number of abandoned farm buildings. It also contains a small property known as the Magee Property, which is the location of the Byrne-Warfield House,

designated in the *1994 Clarksburg Master Plan* as a historic site. The Property Owners have contracted to purchase the Magee Property and intend to preserve this historic site as a community amenity. A tributary of Cabin Branch Creek runs through the west side of the site. Most of the stream valley, as well as a sizeable area adjacent to it, is forested. Two small areas in the west side of the site are within the Clarksburg Special Protection Area.

The surrounding area for this application is bounded roughly by I-270 on the east, an undeveloped I-3 zoned parcel adjacent to the new Clarksburg Detention Center on the north, Ten Mile Creek on the west, and Black Hill Regional Park and the Linthicum West Realty property to the south. The surrounding area is dominated by agricultural fields to the north, west and south, classified under the RE-1/TDR Zone, and Black Hill Regional Park to the south. Scattered houses have been and are being developed along Clarksburg Road and West Old Baltimore Road in the RE-1/TDR Zone. Immediately north of the subject property are the Clarksburg Road/I-270 interchange, a rubble excavation area left over from I-270 construction, a recently built Montgomery County Detention Facility, and undeveloped land classified under the I-3 Zone. Immediately south of the Cabin Branch Community, abutting the south side of West Old Baltimore Road, is the Linthicum West Realty property, which is designated in the *1994 Clarksburg Master Plan* for residential development under the RE-1/TDR Zone. East of I-270 (outside the designated surrounding area) are the Gateway 270 Corporate Office Park and the Lockheed Martin office development.

The subject property was classified under the RR Zone (Rural Residential, now known as R-200, 20,000-square-foot minimum lot size) in the 1958 Countywide Comprehensive Zoning. It was rezoned to a combination of RE-1/TDR, RMX-1/TDR and I-3 by sectional map amendment G-710 in 1994.

The *1994 Clarksburg Master Plan* (the "Master Plan") was intended to "guide the growth of Clarksburg from a rural settlement to a transit- and pedestrian-oriented town surrounded by open space." Master Plan at 15. It divides the study area into a series of geographic areas including the "Cabin Branch Neighborhood," a 950-acre area that includes the Cabin Branch Community north of



West Old Baltimore Road, plus an additional 415 acres south of West Old Baltimore Road. See Master Plan at 40-41. The Cabin Branch Neighborhood is the only area of Clarksburg west of I-270 that the Master Plan proposes for significant residential development. The Master Plan identified several reasons to designate this area as a “mixed-use neighborhood center,” including proximity to the Boyds commuter rail station and the transitway (a dedicated light rail or bus route) proposed east of I-270; access to Clarksburg Road, which has one interchange with I-270 and is planned for a second one; land ownership in several large parcels conducive to an overall planned development concept; close proximity to Black Hill Regional Park offering the opportunity for a strong neighborhood-park relationship; and extensive frontage on I-270, opposite existing high-tech uses. See Master Plan at 64. Relevant Master Plan objectives for the Cabin Branch Neighborhood are outlined below.

- Provide a mix of uses including 1,950 residential dwelling units (45 to 55 percent detached, 35 to 45 percent attached, and 10 to 20 percent multi-family), 2–2.3 million square feet of employment uses, 120,000 square feet of retail space, and public uses including places of worship, child care, a community building, a park and an elementary school.
- Encourage an employment pattern that is supportive of I-270 as a high-technology corridor, with RMX and I-3 as base zoning along I-270 and rezoning to MXPB recommended.
- Create a transit-oriented land use pattern that facilitates bus access and circulation, with a neighborhood core that is linked by bus to the proposed transitway east of I-270 and to the existing MARC station in Boyds, and that is located within one-quarter mile of as many residential units as possible.
- Maximize access to the proposed open space system by locating public uses such as a local park, an elementary school and passive open spaces adjacent to the Cabin Branch stream valley, locating residential streets adjacent to the stream



valleys on at least one side, and connecting the two central stream valleys with public open spaces.

- Provide an interconnected roadway system with site access via a widened Clarksburg Road and an extension of Newcut Road as a four-lane highway from Clarksburg Road, through a new I-270 interchange, to Mid-County Highway; West Old Baltimore Road was also described as an attractive rural road that should not be widened, but was also designated as an Arterial Highway which, if built to County standards, would require a wide corridor and widening of the roadway from the existing 20 feet to 44 feet including shoulders.
- Create a strong neighborhood focal point by concentrating public and retail uses in the same general area.
- Emphasize protection of the west fork of Cabin Branch, which has high water quality and tree cover.

The Development Plan in this case contains adequate information concerning the required elements, including site access, proposed buildings and structures, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. The Land Use Plan divides the Cabin Branch Community into Areas A, B, C and D, which constitute the subject property, and Area E on the west side. While it does not specifically identify the intended use of each individual structure, the Land Use Plan identifies the type and density of land uses to be built in Areas A through D and specifies, in the tables reproduced on the next page, the maximum total density to be permitted for each type of use in the entire subject property.

The Land Use Plan includes a development program that outlines the phasing for development of structures, open spaces, vehicular and pedestrian circulation systems and recreational facilities. Pursuant to this development program, the first buildings to be constructed on the subject property are required to be office and health care facilities in Area C and office facilities in Area A. The



**Uses and Densities on Subject Property  
Excerpted from Land Use Plan, Exhibit 67(g)**

**Tables from Page 18 of HE Report**



Land Use Plan also identifies planned recreational amenities, including the stream valley buffer areas, in which no construction is to occur except for utilities, road right-of-way and stormwater management.

The Land use Plan also includes "General Notes" that provide important commitments by the Applicants, including the following:

- Note (2) restricts development in Areas A through D to the uses and densities specified in the summary tables.
- To demonstrate compliance with MXPDP requirements, notes (3) and (4) specify, for Areas A through D, maximum residential densities and minimum and maximum square footage and floor area ratio ("FAR") for employment uses.
- In compliance with the MXPDP Zone, note (7) requires at least 50 percent green area in the residential area of the subject property and 40 percent in the commercial area.
- Note (8) underscores the binding nature of the maximum densities specified in the MXPDP Yield Summary table.
- Note (9) memorializes the commitment to dedicate land for road right-of-way as required at preliminary plan review.

The Applicants have specified on the Land Use Plan additional binding elements in textual form, which were developed jointly by the Applicants, Technical Staff and the People's Counsel. Some of the binding elements apply to the west side of the site as well as to the subject property. The first binding element commits the Applicants to acquiring the same number of transferable development rights that would be required if all of the property currently classified under the RMX-1/TDR Zone were developed according to its existing zoning. Other binding elements commit the Applicants to dedicating sites for an elementary school, a local park and a recreation facility; considering trip reduction measures during preliminary plan review; creating a network of interconnected public and private streets in a grid pattern; designing streets with pedestrian-friendly elements; designing the road that leads to Black Hill Regional Park to serve as a park gateway; maintaining the rural character of West Old Baltimore Road by minimizing environmental impacts and providing generous green edges; including in the service/public uses up to 500 dwelling units for seniors or persons with disabilities; and providing on-street parking on streets with retail uses. Binding element number 5 contains a clerical error that should



be corrected, as specified on page 21 of the Hearing Examiner's Report and Recommendation, to correspond more closely to the evidence of record.

The Development Plan includes a Road Hierarchy Plan, Exhibit 47, which shows that the main roadways through the development would be First Avenue and Second Avenue, running north/south from Clarksburg Road to Newcut Road. First and Second Avenues are both numbered A-304 because they represent a reconfiguration of the Master Plan-designated Route A-304, which was recommended to be a four-lane divided highway. To better support the goal of a pedestrian- and transit-friendly development, the Applicants show A-304 as two separate, two-lane roadways that would run roughly parallel to one another. Both would be divided by medians and allow on-street parking.

The Master Plan recommended that Newcut Road be constructed as a four-lane divided highway from Clarksburg Road to Mid-County Highway, with a new interchange at I-270. Newcut Road was to serve as one of the main through points for traffic. To avoid the environmental damage of building Newcut Road through the middle of the Cabin Branch stream valley, and to avoid having a major highway pass through the development, the Applicants propose Newcut Road as a two-lane road (divided by a median) extending from West Old Baltimore Road north to the terminus of Second Avenue, where it would turn east and connect with a new I-270 interchange. Thus, traffic bound for I-270 would need to use West Old Baltimore Road to get from Clarksburg Road to the Newcut Road interchange, or drive up Clarksburg Road to its interchange with I-270 a short distance to the north. The Applicants propose to widen West Old Baltimore Road to accommodate additional traffic.

The Master Plan recommended widening Clarksburg Road to six lanes for a short distance south of its interchange with I-270, then to four lanes from there to its new intersection with Newcut Road, and to two lanes from that point south to Boyds. The Applicants propose to widen Clarksburg Road to six lanes for a short distance south of the I-270 interchange, then to four lanes from that point to Second Avenue, which is considerably north of where Newcut Road would have intersected Clarksburg Road under the Master Plan concept. The Applicants propose to taper Clarksburg Road down to two lanes immediately south of Second Avenue.



The Applicants were supported in their decisions concerning Newcut and Clarksburg Roads by Technical Staff, who testified that the environmental harm attendant to extending Newcut Road to Clarksburg Road through the Cabin Branch stream valley was too great to justify the transportation benefit. Technical Staff also stated that based on current transportation modeling, the full number of lanes recommended for Clarksburg Road in the Master Plan is not needed. See Tr. June 12 at 123-132. Staff opined that replacing the four lane recommended Route A-304 with two two-lane, pedestrian-friendly streets, consistent with a short-block grid pattern, would be valuable in attaining the Master Plan goal of integrating the employment areas into the overall Cabin Branch Community. See Staff Report, Ex. 38 at 17.

The plans for the Cabin Branch Community incorporate principles of traditional neighborhood design such as creating neighborhoods with a pedestrian scale, mixing uses horizontally and vertically, and locating both public and private services and amenities within a five-minute walk of as many residences as possible. These principles were applied in designing the interconnected road system, short blocks, buildings close to the road with parking in the rear, numerous bus stops, and a retail core area along First Avenue, within a five-minute walk for many residents. The Development Plan includes specific efforts to create physical and visual connections to the stream valleys throughout the Cabin Branch Community, including parks, trails, and open spaces between buildings. The design would employ structured parking to reduce the amount of surface parking. Where surface parking is used, the Applicants intend to incorporate bio-retention stormwater management facilities into landscaping areas. This would avoid large, unrelieved paved parking areas and at the same time contribute significantly to protecting groundwater quality and quantity.

The District Council finds that the Development Plan submitted with this application satisfies all of the applicable requirements under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The proposed development of the subject property is fully consistent with the uses and density indicated by the *1994 Clarksburg Master Plan*.



The Master Plan designated the subject property as part of a mixed-use neighborhood with employment, retail, public uses and residential, and the Applicants propose the same mix of uses. The potential number and types of residential units the Applicants propose on the subject property is consistent with the Master Plan's recommendations for the number and type of residential units in the Cabin Branch Neighborhood. The square footage of employment and retail uses proposed by the Applicants also is consistent with the amounts recommended in the Master Plan. Evidence related to the county capital improvements program indicates that that the proposed reclassification would not conflict with that program.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development. The purpose clause for the MXPDP Zone contains a number of goals and objectives, all of which are satisfied by this application. The District Council's findings as to each section of the purpose clause are set forth below.

Introductory paragraph and paragraph (a): Master Plan implementation. The proposed rezoning would allow implementation of the Master Plan recommendation to develop the subject property as part of a comprehensively planned, multi-use center. As stated by Technical Staff, "the MXPDP Zone will permit an integrated approach to design and development in which land uses are combined, densities are shared, impact on the environment is mitigated, and infrastructure is located in an efficient manner without the constraints of property [or zoning] lines." The proposed reclassification would provide the flexibility needed to allow the Property Owners to cooperate productively in creating a single, comprehensively planned mixed-use center. As a result, the subject property would be developed in a fashion more consistent with the objectives of the Master Plan than would be possible with the current split zoning.

Paragraph (b): concept plan. The Applicants chose not to use the concept plan option.

Paragraph (c): higher density residential uses integrated into overall multi-use center. The Land Use Plan includes higher-density multi-family residential uses as an integral part of the



development. Most of the multi-family uses would be within easy walking distance of the retail core, and all would be in close proximity to employment uses and other types of residential development. The system of interconnected roadways, trails and open space would strengthen the linkages between higher-density uses and lower-density residential, public parks and other recreational amenities.

Paragraph (d): internal compatibility of residential and nonresidential uses. The Land Use Plan presents a development with a high degree of internal compatibility. The density and intensity of uses decrease from the I-270 frontage to the west side of the property, allowing employment uses to provide a noise buffer for most of the residential uses while placing most of the residential units within a five-minute walk of the retail core. Residents would have easy access to commercial, recreational, employment and institutional amenities within the non-residential areas, including shopping, employment opportunities, health services, parks and other open space.

Paragraph (e): ensure compatibility with surrounding uses through higher standards of land planning and site design than under conventional zoning. The Development Plan required in the MXPD Zone serves as an additional, more comprehensive level of review than would be required for the underlying zones. The MXPD Zone also incorporates specific standards, particularly with regard to setbacks, that assure compatibility with adjoining uses. Moreover, the proposed reclassification would permit a comprehensive, integrated approach to developing the subject property which, by its nature, involves higher standards of land planning and site design than could be accomplished under the differing requirements of the existing zoning classifications.

Paragraph (f): open space to benefit community generally, with physical and aesthetic integration of uses and activities within the development, structured parking to minimize surface parking, and landscaping for surface parking. Open space to be provided on the subject property includes the Little Seneca stream valley, the Central Park, additional urban parks and open spaces, and trail connections. Additional open space including the Cabin Branch stream valley would be available on the west side of the site. Many of these elements would be along the edges of the subject property, making them accessible to the general community for relaxation, recreation and social activity. The grid pattern



of the roadways, the attention to maintaining open vistas of the stream valleys and links between the two main stream valleys, the location of the larger recreational amenities abutting a stream valley, and the extensive system of trails, bike paths, parks and other open spaces would result in a high degree of physical and aesthetic integration of uses and activities. The Applicants intend to incorporate on-street parking, structured parking, and extensively landscaped surface parking in the development.

Paragraph (g): comprehensive non-vehicular circulation networks and linkages among different types of uses. The Development Plan incorporates a comprehensive non-vehicular circulation network including an interconnected system of sidewalks, trails and bike paths, with short blocks in a grid pattern to encourage residents to walk within the development. This network would provide extensive linkages among the various uses and open spaces on the subject property and in the Cabin Branch Community as a whole.

Paragraph (h): efficient use of energy resources. The evidence demonstrates that the Applicants are aware of this element of the purpose clause and will explore a variety of measures to satisfy its requirements, including installing energy-efficient appliances, windows and lighting fixtures.

Paragraph (i): preserve and take the greatest possible aesthetic advantage of trees, and minimize grading. The submitted Development Plan includes preservation of higher quality forest as well as reforestation and afforestation in the stream valleys. Applicable forest conservation requirements would be satisfied on site. The comprehensive approach taken to development of the subject property and the Cabin Branch Community as a whole would allow the site design to follow the topography and minimize grading.

Final paragraph: three findings. The purpose clause states that the PD Zone may be approved if three findings are made:

- (1) the application is proper for the comprehensive and systematic development of the county;
- (2) the application is capable of accomplishing the purposes of this zone; and
- (3) the application is compatible with the general plan and applicable master plan.



As explained further in the remainder of this resolution, based on the preponderance of the evidence, the District Council concludes that the proposed reclassification is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of the MXP zone, and is compatible with the general plan and the applicable master plan.

The MXP Zone includes a number of standards and regulations, each of which would be satisfied by the proposed development of the subject property. These regulations and the application's compliance with them are summarized below.

59-C-7.51(a): Master Plan. Land cannot be classified under the MXP Zone unless it is recommended for mixed-use development in an approved and adopted master plan. The 175-acre portion of the subject property fronting on I-270, which corresponds roughly to the area from I-270 to First Avenue, was recommended in the Master Plan for MXP mixed-use zoning. The remainder of the subject property was recommended in the Master Plan for its current zoning classification, RMX (Residential Mixed Use).

59-C-7.51(b): Minimum area. At 283.5 acres, the subject property substantially exceeds the 20-acre minimum for the zone.

59-C-7.51(c): Adjacent and readily accessible from major highways. The subject property is located adjacent to and has access to I-270, a major limited access freeway.

59-C-7.52(a): All residential uses permitted. The proposed development would include single-family detached, single-family attached and multi-family residential dwellings, as well as housing and related facilities for senior adults or persons with disabilities. The planned development would follow closely the recommendations of the Master Plan. Locations and types of residential units proposed are shown on the Development Plan, with multi-family uses close to both commercial and lower density residential uses. Multi-family uses would be integrated in the overall fabric of the development and would contribute to the mix of uses along the main street in the development, First Avenue.

59-C-7.52(b) and (c): Commercial and Industrial. The submitted Development Plan shows the location and general types of commercial and industrial uses, as required.



The District Council's approval of the Development Plan includes approval of the locations and general types of commercial and industrial uses proposed. Retail uses would occupy roughly ten percent of the commercial floor area, well below the 20 percent limit. Industrial uses would comply with the environmental control provisions of Section 59-C-5.46.

59-C-7.52(d): Transitory use. Transitory uses are permitted; none are proposed.

59-C-7.52(e): Equipment. Any installation of rooftop-mounted antennas and related unmanned equipment will comply with §59-A-6.14, as required.

59-C-7.53(a). The maximum residential density proposed on the subject property is approximately 20 dwelling units per acre, consistent with the recommendations of the Master Plan and well below the limits set for the zone.

59-C-7.53(b). The District Council must determine whether the density applied for is appropriate, taking into consideration the master plan, the purposes of the MXPB Zone, the requirement to provide MPDUs, and county housing policy. The proposed density is well below the maximum permitted in the zone, so clearly it is not excessive. A moderate overall density is appropriate in light of the Master Plan recommendations specifying a maximum of 1,950 residential units in the entire 950-acre Cabin Branch Neighborhood, and the emphasis in the purpose clause on compatibility. A development with densities approaching the levels permitted in the MXPB Zone would have difficulty maintaining compatibility with the largely rural, low-density uses in the surrounding area. Accordingly, the District Council finds that the residential density proposed for the subject property is appropriate for the site.

59-C-7.53(c). The Master Plan recommended a comprehensively developed mixed-use center with residential and non-residential components, as proposed here. The residential density proposed on the Development Plan is consistent with the recommendations of the Master Plan.

59-C-7.54: Density of commercial/industrial development. The maximum commercial/industrial density proposed on the Development Plan is a FAR of 0.59, which is compatible with the recommendations of the Master Plan and below the limit established for the zone.



59-C-7.55: Compatibility standards. All uses must conform to the purposes of the MXP Zone and must be compatible with existing or proposed uses in the surrounding area. Three threshold requirements apply, related to setbacks and height limits. The Development Plan would satisfy each of these requirements. Moreover, based on a more general consideration of compatibility, the District Council finds that the proposed development would be compatible with existing and proposed uses in the surrounding area.

The proposed development would be a significant change from the current agricultural use of the subject property, and would be a more intense form of development than the rural, low-density uses prevailing in the surrounding area. However, only small portions of the subject property abut residentially developed property, and for the most part the development facing those residences would be buffered by green space and/or roads. The largest borders of the Cabin Branch Community that abut residential uses would be in the west side of the site, where development is intended to be almost entirely low-density, single-family detached residential. The Linthicum Realty property south of the Cabin Branch Community is expected to be developed for single-family residential use, creating easy compatibility in that portion of the site. Mixed-use development of the subject property would result in employment uses along I-270 that would be much more compatible with a high-speed freeway than the existing agrarian uses. Moreover, the proposed development would implement the principal goals of the Master Plan, including focusing development in identified areas and preserving surrounding green space. Technical Staff testified that they found the proposed development to be compatible because of the layout, including setbacks, and because of the support it garnered among Clarksburg residents. For all of these reasons, based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be compatible with existing and proposed uses in the surrounding area.

59-C-7.56: Minimum green area and amenity requirements. A binding element of the Land Use Plan commits the Applicants to meeting the minimum green area requirements for the zone.



59-C-7.57: Public facilities and utilities. The Development Plan provides for property dedication for roadways and for the principal public facilities recommended in the Master Plan: an elementary school, a recreation center/community building, and a local park. The Applicants have represented that all utility lines would be installed underground.

59-C-7.58: Parking facilities. The Applicants have represented that they would satisfy the requirements of Chapter 59-E and that off-street surface parking areas would be carefully designed and landscaped to comply with this provision and a similar provision in the purpose clause for the zone.

In addition to the purpose and regulations of the zone, the application satisfies the requirement to provide for the maximum safety, convenience and amenity of residents. Residents would enjoy a neighborhood developed with a high level of planning and attention to convenience, making the best use of amenities. Many residences would be within a very short of walk of shopping and employment opportunities, and all would have ready access by foot, bicycle, bus or car. Residents would be able to enjoy the aesthetic benefit of the stream valleys within the Cabin Branch Community, close proximity to Black Hill Regional Park, and the view of the surrounding countryside. The extensive, efficient roadway network with its grid pattern and easy access to neighboring roadways would provide for residents' safety.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient, particularly in view of the extensive roadway improvements that the Applicants would be obligated to provide to satisfy Planning Area Transportation Review and Local Area Transportation Review requirements.

**§59-D-1.61(d): preservation of natural features.** The evidence supports a finding that because of the comprehensive, integrated nature of the proposed development, it would tend to prevent soil erosion, minimize grading and preserve natural vegetation and other natural features of the site considered to have the highest environmental value. The Development Plan demonstrates that the



Applicants would satisfy forest conservation requirements on-site, and the approved Preliminary Water Quality Plan demonstrates compliance with water resource protection requirements.

§59-D-1.61(e): common area maintenance. The Land Use Plan specifies in binding element number 13 that at site plan review, the owners of the property would enter into a Site Plan Review Agreement providing for perpetual maintenance of open space areas and other areas to be used for recreational, common or quasi-public purposes. This statement satisfies this requirement.

The District Council further determines that the proposed zoning bears sufficient relationship to the public interest to justify it. The proposed rezoning and development would be in substantial compliance with the use and density recommended in the Master Plan. The Development Plan would depart from the Master Plan's recommendations for roadway configuration because the Applicants would widen West Old Baltimore Road to serve as the main east-west through road, instead of directing the main flow of traffic through the new development on Newcut Road. The record contains no discussion of the environmental impacts of widening West Old Baltimore Road, although presumably they are less dramatic than the severe impacts of building a new four-lane roadway through a stream valley. Technical Staff and the Planning Board concluded that under today's standards and based on current traffic modeling, the benefits of extending Newcut Road as recommended in the Master Plan are clearly outweighed by the costs. Based on the preponderance of the evidence, the District Council concludes that the proposed rezoning and development would be in substantial compliance with the *Clarksburg Master Plan*.

The District Council further concludes that the proposed development would be adequately served by and would not adversely affect public facilities in the area. A community member presented anecdotal evidence that development of the roadway network as proposed by the Applicants would have adverse effects on area roadways. While frustration with traffic congestion is understandable, the Applicant presented competent, probative and substantial evidence that the proposed development would not adversely affect traffic congestion during the weekday peak periods, which is the commonly accepted measure of traffic impact in this County. To allow such evidence to be



outweighed by contentions that amount to little more than generalized concerns and unsupported allegations would be counter to the dictates of Maryland law. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994).

Correspondence from Montgomery County Public Schools indicates that school capacity may not be adequate to accommodate the proposed development. However, the Planning Board bases its determination concerning school capacity on the AGP, which currently states that school capacity in the Clarksburg/Damascus school district is considered adequate. Under these circumstances, the evidence does not justify denial of the requested rezoning on the basis of school capacity.

For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

### **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:

Zoning Application No. G-806, for the reclassification from the RE-1/TDR, RMX-1/TDR and I-3 Zones to the MXPD Zone of 283.5 acres of land east of Clarksburg Road (MD 121), west of I-270 and north of West Old Baltimore Road in Clarksburg, in the 2nd Election District, is hereby approved in the amount requested and the Development Plan submitted in conjunction therewith is also approved, subject to the specifications of the Land Use Plan, Ex. 67(g), which forms its central component; provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Ex. 67(g), with binding element no. 5 revised to read "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"  
for certification in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar, CMC  
Clerk of the Council





## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

**Date Mailed: June 22, 2004**

**Action:** Approved Staff Recommendation  
**Motion** of Comm. Wellington, seconded by  
Comm. Bryant with a vote of 4-0;  
Comms. Berlage, Bryant, Robinson and  
Wellington voting in favor; Comm. Perdue  
absent

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan 1-03110A

NAME OF PLAN: CABIN BRANCH

On 09/17/03, GOSNELL PROPERTIES, WINCHESTER HOMES, ADVENTIST HEALTHCARE, FALLER PROPERTIES & MAGEE PROPERTIES submitted an application for the approval of a preliminary plan of subdivision of property in the RMX-1/TDR/ MXPDP zone. The application proposed to create 1600 residential dwelling units, 500 senior units and 1,538,000 square feet of retail and employment on 540 acres of land. The application was designated Preliminary Plan 1-03110A. On 06/03/04, Preliminary Plan 1-03110A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-03110A to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-03110A.

Approval of Phase I, Subject to the Following Conditions:

- 1) Applicant is bound by a Binding Elements for Local Map Amendment G-806 (Attachment A).
- 2) Total development under Phase I of this preliminary plan application is limited to the following uses and density as prescribed in Transportation Planning memo, dated May 26, 2004 (Attachment B):
  - 1,600 residential dwelling units
  - 1,538,000 square feet of commercial space
  - 500 dwelling units of elderly housing
- 3) To satisfy Policy Area Transportation Review, the applicant shall:
  - a. Construct Newcut Road as a four-lane divided arterial roadway between West Old Baltimore Road and the eastern business district roadway parallel to I-270;
  - b. Upgrade West Old Baltimore Road to two-lane arterial roadway standards acceptable to the Department of Public Works and Transportation (DPWT) and Transportation Planning staff between Newcut Road and MD 121;



- c. In accordance with the Clarksburg Master Plan, construct two parallel two-lane business district roadways between Newcut Road and MD 121 in lieu of a four-lane divided arterial roadway; and
  - d. In accordance with the Clarksburg Master Plan, upgrade MD 121 to arterial roadway standards between West Old Baltimore Road and I-270 and upgrade the interchange ramps of MD 121 and I-270.
- 4) To satisfy Local Area Transportation Review, the applicant shall:
- a. Provide the following improvements at MD 121/I-270 northbound on/off ramp;
    - Add northbound left-turn movement to provide dual left turn lanes
    - Add separate westbound left-turn lane
    - Signalize the intersection
    - Widen Clarksburg Road bridge over I-270 to accommodate one additional through lane and a median island subject to SHA's requirements
  - b. Provide the following improvements at MD 121/I-270 Southbound on/off ramp;
    - Add a westbound through lane
    - Signalize the intersection
    - Add eastbound on-ramp to southbound I-270
  - c. Provide the following improvements on MD 121 frontage;
    - Six-lane roadway section from the I-270 southbound on/off ramp intersection to the first site entrance (Street "A"/Whelan Lane). The entrance would include a two-lane roundabout with right-turn bypass lanes to add and drop the third lane for Clarksburg Road
    - Four-lane roadway between Street "A"/Whelan Lane and First Avenue
    - Two-lane section from First Avenue to West Old Baltimore Road and roundabout at West Old Baltimore Road to accommodate traffic safely and efficiently at this intersection
  - d. Participate in providing the following improvements at MD 121/Gateway Center Drive intersection;
    - Stripe westbound approach of MD 121 to include a separate left-turn lane and through lane
    - Stripe northbound approach of Gateway Center Drive to activate dual left-turn lanes
    - Install traffic signal
    - Construct westbound through lane on MD 121 to accept dual left-turn movements and join existing westbound lanes at I-270/Northbound on/off ramp intersection
  - e. Participate in providing the following improvements at MD 121/Frederick Road (MD 355) intersection;
    - Widen eastbound approach of MD 121 and stripe additional left-turn lane (dual left)
    - Construct northbound through lane on MD 355 to accept dual left with transition to join existing conditions



- Modify traffic signal

- f. Participate in providing the following improvements at MD 355/West Old Baltimore Road intersection;
    - Widen eastbound approach of West Old Baltimore Road to provide separate right-turn lane
    - Widen northbound approach of MD 355 to provide separate left-turn lane. A three-lane section will be provided on MD 355 between West Old Baltimore Road and Brink Road
    - Widen southbound approach of MD 355 to provide separate right-turn lane
  - g. Participate in widening the southbound approach of MD 355 to add additional through lane at the MD 355/Newcut Road intersection; and
  - h. Participate in widening MD 355 south of Brink Road to provide a four-lane divided section. The four-lane section would join the existing four-lane section at Willstone Manor Lane.
- 5) Roadway improvements 3a through 3d above (and referenced as 2a through 2d in the Transportation Planning memo) shall be sequenced in accord with sub-phases of Phase I as contained in Christopher Turnbull's letter to Ronald C. Welke dated February 12, 2004 and Ronald C. Welke's letter to Christopher Turnbull dated March 8, 2004 (Attached to Transportation Planning memo – Attachment B).
  - 6) At Site Plan, the applicants, M-NCPPC Transportation Planning staff, and DPWT staff will recommend mutually acceptable trip reduction measures for Planning Board review and approval. Also, the parking ratios for non-residential uses in the Cabin Branch Community will be determined at Site Plan, taking into consideration trip reduction goals.
  - 7) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width shown in the Adopted June 1994, Clarksburg Master Plan unless otherwise designated on the preliminary plan.
  - 8) All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Clarksburg Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By \_\_\_\_\_" are excluded from this condition.
  - 9) Compliance with the conditions of approval for the preliminary forest conservation plan including: reforestation of the stream buffers starting in the first growing season after MCDPS issuance of the first sediment control permit; and a 5-year maintenance period for all planted areas. Final forest conservation plan(s) to be approved at the time of site plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
  - 10) Compliance with the conditions of approval of the Preliminary Water Quality Plan (Attachment C).
  - 11) Record plat to reflect a Category I easement over all areas of forest conservation and stream valley buffers.
  - 12) Record plat to reflect common ingress/egress and utility easements over all shared roadways and driveways.
  - 13) Record plat to reflect dedication to the Board of Education of an elementary school site as shown on the approved preliminary plan. Applicant to grade the site to elevations that are acceptable to MCPS and construct such retaining walls as are necessary to support the program requirements of an elementary school facility. The bounds of the school parcel shall exclude the retaining walls, stormwater management systems and afforestation.



- 14) Applicant to dedicate to M-NCPPC the agreed area of contiguous land that is located between the proposed elementary school site and proposed Street J and is south of, and adjacent to, proposed Street G and Street H, and continues south along the Little Seneca Tributary to Old Baltimore Road. The northern portion of the dedicated land to be sufficiently large and suitable for active recreation in order to accommodate the agreed active recreation facilities and park amenities to be provided by Applicant as set forth below. Dedicated parkland to be of a unified configuration, divided only by the historic home (including driveway and front yard of home) that is to be dedicated to the HOA or other party acceptable to M-NCPPC staff. Recreational facilities and grading for said facilities to be located outside of stream buffers and other environmentally sensitive areas. Parkland to be conveyed by time of record plat and conveyed free of trash and unnatural debris and park boundaries staked and signed to distinguish from private properties.
- 15) Within the dedicated local park acreage, Applicant to provide, at Applicants expense, the park's active recreational facilities and amenities to include at least one (1) adult sized softball field, one (1) adult sized soccer field, multi-age playgrounds acceptable to M-NCPPC staff, a hard surface court or picnic area with 2 shelters, 8' wide hard surface trails within the park to serve the various facilities, a drinking fountain, park signage and information kiosk, portable restroom pad and enclosure, appropriate fencing for safety purposes along the fields and retaining wall (acceptable to M-NCPPC staff), park landscaping, and local park parking for at least 140 cars, including at least 80 spaces on the dedicated parkland. Parallel parking spaces along the park side of the adjacent roads should be appropriately striped and marked to delineate the individual parking spaces available for park users. Visual screening to be provided between the park parking area south of the community pool and the adjacent private property. Park layout to be substantially as set forth on the attached plan sketch, with final details of park design and layout as well as final grading and stormwater management plans to be determined in coordination with M-NCPPC staff prior to site plan approval. Facilities to be constructed to park standards and specifications after procurement by Applicant of appropriate park permit. Copies of applicable standards and specifications will be provided to Applicant by time of site plan.
- 16) No retaining walls or stormwater management ponds or facilities will be located on dedicated parkland. Applicant to work with M-NCPPC staff on park grading issues at time of Site Plan to minimize the size of needed retaining walls adjacent to parkland.
- 17) Applicant to construct hard surface and natural surface trails on dedicated parkland and throughout the community to connect open spaces, elementary school and parkland together in a pedestrian friendly manner. Applicant to work with M-NCPPC staff prior to Site Plan approval to establish exact locations of needed trails. Trails within parkland to be constructed to Park and Planning Department standards and specifications.
- 18) Trail access from the community to Black Hill Regional Park to be provided by the Applicant, including construction by Applicant of an 8' wide hard surface trail along Newcut Road and south along Street W to West Old Baltimore Road. Applicant to work with M-NCPPC staff to provide a park like entrance setting and character to Street W since this street will be the primary point of access to Black Hill Regional Park. Layout and buffering of office buildings along Street W to provide a pleasant and aesthetic entrance to Black Hill Regional Park.
- 19) Compliance with the MCDPS conditions of approval of the Preliminary Water Quality Plan and stormwater management concept letter dated, May 13, 2004 (Attachment D).
- 20) Compliance with conditions of approval of MCDPWT letter dated, May 14, 2004 (Attachment E) unless otherwise amended by DPWT.
- 21) At least sixty (60) days prior to the submission of a complete Site Plan application the applicant shall submit an "Infrastructure Plan" for Planning Board Review. The plan shall include, but not be limited to:



- Location and types of stormwater management facilities for quality and quantity controls that comply with the MCDPS - Preliminary Water Quality Plan including appropriate geotechnical studies
  - Location of major onsite water and sewer lines
  - Details of grading including location and typical structural detail of retaining walls
  - School sites and Park sites
  - Recreational guideline concept plan
  - Proposed schedule for clearing and grading of site
- 22) At least sixty (60) days prior to submission of a complete Site Plan application the applicant shall submit a "Infrastructure - Roads only Site Plan" for Planning Board Review. This plan shall include:
- Final widths of all public and private right-of-ways
  - Cross sections of all roads
  - Median breaks
  - Intersection spacing
  - Any special features to be allowed in public right-of-ways
- 23) Access and improvements along Clarksburg Road (MD 121) and I-270 as required by the State Highway Administration.
- 24) No clearing, grading or recording of plats prior to site plan signature set approval.
- 25) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at Site Plan.
- 26) No encroachment into stream buffers for stormwater management or sediment control facilities, except for necessary outfalls and temporary sediment control facilities in unforested buffers, without prior approval by the Planning Board.
- 27) Applicant to work with MNCPPC staff before individual Site Plan approvals to reduce onsite cut and fill from that shown on the preliminary plan, and minimize the height of retaining walls wherever possible.
- 28) Maintenance of common open space facilities, including retaining walls and historic structure to be addressed prior to approval of any and all subsequent Site Plan approvals.
- 29) A landscape and lighting plan must be submitted as part of the Site Plan application for review and approval by technical staff.
- 30) Phase I of the Preliminary Plan will remain valid for one hundred forty-five (145) months from the date of mailing of the Planning Board Opinion. Record plats may be recorded in phases based upon the following schedule:
- Stage I (expires 37 months from the date of mailing of the Planning Board Opinion): 420 dwelling units, 125 senior housing units and 380,000 square feet commercial.
  - Stage II (expires 73 months from the date of mailing of the Planning Board Opinion): 404 dwelling units, 250 senior housing units and 380,000 square feet commercial.
  - Stage III (expires 109 months from the date of mailing of the Planning Board Opinion): 388 dwelling units, 125 senior housing units and 380,000 square feet commercial.
  - Stage IV (expires 145 months from the date of mailing of the Planning Board Opinion): all remaining development.
- Prior to the expiration period, the final record plat for all remaining lots within each phase must be recorded, or a request for extension must be filed.
- 31) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one hundred forty-five (145) months from the date of mailing of the Planning Board Opinion.
- 32) Other necessary easements shall be shown on the record plats.





Attachment B  
SEP 19 2007

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

**MCPB No. 07-131**

**Site Plan No. 820050150**

**Project Name: Cabin Branch Infrastructure and Roads Only Site Plan**

**Date of Hearing: June 14, 2007**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on November 4, 2004, FFTM1, Limited Partnership, Winchester Homes, Inc., King Farm Partnership, Concordia Group and Adventist Healthcare, Inc. ("Applicant"), filed an application for approval of a final water quality plan for the infrastructure components of site plan No. 820050150 ("Final Water Quality Plan") and an Infrastructure and Roads Only Site Plan to accommodate 1,886 residential dwelling units, 500 senior units and 2,436,000 square feet of retail and employment, including 635 Transfer Development Rights (TDRs), and 236 Moderately Priced Dwelling Units (MPDUs) ("Site Plan" or "Plan") on 535.04 acres of RMX-1/MXPD-zoned land, located in the northwestern quadrant of the intersection of Interstate 270 and West Old Baltimore Road ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820050150, Cabin Branch Infrastructure and Roads Only Site Plan (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated June 1, 2007, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on June 14, 2007, the Planning Board held a public hearing on the Application (the "Hearing"); and

APPROVED AS TO LEGAL SUFFICIENCY  
*[Signature]* 8/31/07  
MONTGOMERY COUNTY LEGAL DEPARTMENT



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WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on June 14, 2007 the Planning Board approved the Final Water Quality Plan and the Infrastructure and Roads Only Site Plan subject to conditions on the motion of Commissioner Perdue; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Hanson, Wellington, Perdue and Robinson voting in favor of the motion.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 19, the Montgomery County Planning Board approved Final Water Quality Plan No. 820050150 for the infrastructure components of Site Plan No. 820050150 subject to the following conditions:

1. Reforestation of the stream buffer is to begin in the first planting season after the issuance of the first grading permit by the Montgomery County Department of Permitting Services (DPS).
2. A five-year maintenance period shall be required for all planted areas credited toward meeting the requirements of the forest conservation plan.
3. No encroachment into stream buffers for stormwater management facilities or sediment control facilities is allowed without permission of the Planning Board, except for necessary outfalls and temporary sediment control facilities in non-forested portions of the stream buffers. If at later stages of stormwater review and design it is determined that the stormwater management facility is not properly sized and must be enlarged to accommodate the proposed drainage areas, the applicant will have to find additional space outside the stream buffer. This may require the reconfiguration of layouts and loss of developable area.
4. Conformance to the conditions as stated in the DPS letter dated February 22, 2007 approving the elements of the SPA water quality plan under its purview.
5. Amendments to the forest conservation plan must be submitted and approved by the Planning Board with all future site plans, mandatory referrals, and special exceptions prior to any clearing and grading.
6. All on site environmental buffers/stream buffers must be planted prior to any off-site forest planting or before off-site forest conservation credits can be applied to meet the overall planting requirements of this forest conservation plan.
7. A Final Water Quality Plan for each detailed site plan must be submitted, which may amend the Final Water Quality Plan approval for the Infrastructure Plan.



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This Final Water Quality Plan does not approve the elements in the detailed site plans.

BE IT FURTHER RESOLVED that all design components as described in the letter from the Montgomery County Department of Permitting Services dated February 22, 2007, including the Stormwater Management Concept shall be required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES the Infrastructure and Roads Only Site Plan No. 820050150 to accommodate 1,886 residential dwelling units, 500 senior units and 2,436,000 square feet of retail and employment, including 635 Transfer Development Rights (TDRs), and 236 Moderately Priced Dwelling Units (MPDUs), on 535.04 acres subject to the following conditions:

1. Development Plan Conformance  
The proposed development shall comply with the binding elements listed in Local Map Amendment G-806 and the associated Development Plan.
2. Preliminary Plan  
The proposed development shall comply with the conditions of approval for Preliminary Plan 12003110A (formerly 1-03110A) as listed in the Planning Board opinion dated June 22, 2004.
3. Site Design
  - a. Each detailed site plan application shall be reviewed and evaluated for the specific uses proposed to create the proper design character appropriate for the type of development. Within the basic framework established by the major roads approved by this Infrastructure Plan and required by the Preliminary Plan Adequate Public Facilities approval, (Maryland Route 121, Cabin Branch Parkway, Broadway Street, West Old Baltimore Road between Maryland 121 and Broadway Street, and Little Seneca Parkway [aka Newcut Extended]), other streets within the grid system may be modified at the request of Staff or the Planning Board during the review of the detailed site plans to include location, urban design elements, such as street walls, street alignment, unifying architectural treatments, pedestrian friendly environments and landscape treatments.
  - b. The Applicant shall retain a town architect to oversee the design characteristics of Cabin Branch, including review of architectural treatments for individual residential units and commercial building design and layout. The architect shall be a registered architect with experience in town planning, and shall develop design guidelines to provide for thematic consistency of



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architectural design for Cabin Branch. These will include but are not limited to architectural form, relationship to the street, pedestrian walkability and a focus on public space.

- c. Design guidelines shall be submitted and approved by the Planning Board with the first detailed site plan, and shall be binding upon the developer and builder.

4. Amendments

- a. Any major changes to the Infrastructure Plan, such as increased height of retaining walls, significant grading impacts, relocation of public roads and utilities or modifications to the streetscape elements, will require an amendment to the Plan and be reviewed by the Planning Board.
- b. Provide documentation of any minor changes to the Infrastructure Plan with each site plan application. An as-built Infrastructure Plan will need to be provided with the last site plan application to document all of the minor changes.

5. Streetscape

- a. The Applicant shall provide a consistent streetscape, including streetlights and street trees on the primary public roads, such as 1<sup>st</sup> and 2<sup>nd</sup> Avenue, MD 121 and Tribute Parkway. The street trees on these streets shall be spaced a minimum of 30 feet-on center and street lighting should be provided to accentuate the streetscape.
- b. The Applicant shall incorporate the Thematic Landscape and Lighting Plan into the future detailed site plans for street trees, spacing type of light fixtures, planting treatments within alleys, medians and streets.

6. Pedestrian Circulation

Provide an 8-foot wide asphalt bike path on the south and east side of MD 121, west side of 2<sup>nd</sup> Avenue (Broadway Street) and on the south/west side of Streets G and H, northeast side of Street Z, adjacent to the proposed school site, south side of Street P, east side of Street M and FF and the north side of West Old Baltimore Road, or as directed by staff in subsequent site plans.

7. Recreation Facilities

- a. Provide a Local Park site to include the facilities as described in condition 8 below.
- b. Remove the community facility (pool/clubhouse) from the future Park site and relocate the facility to a more centralized location convenient to the residents



and overall community. The location of the pool/clubhouse shall be identified with the first residential detailed site plan.

- d. Provide the community-wide open space and a trail system of the minimum recreational concept for the overall Cabin Branch development. The exact locations, dimensions and sizes of these facilities will be determined with the corresponding site plan.
- e. Each detailed site plan application shall update the overall recreational concept to provide for individual facilities and a cumulative reporting of the community-wide facilities within the Cabin Branch development.

8. M-NCPPC Park Facility

The applicant shall comply with the following conditions of approval from M-NCPPC-Park Planning and Research Analysis in the memorandum dated May 18, 2007:

- a. Applicant to dedicate to M-NCPPC the agreed upon area of contiguous land that is located between the proposed elementary school site and proposed Fulmer Avenue (Street H), Bryne Park Drive and Stilt Street (Street J) and continuing south along the Little Seneca Tributary to Old Baltimore Road. The northern portion of the dedicated land that is suitable for active recreation is to be at least 10 acres of contiguous usable land divided only by the historic home (including circular driveway) that is to be dedicated to the HOA or other party acceptable to M-NCPPC staff. Parkland to be conveyed by time of record plat and conveyed free of trash and unnatural debris and park boundaries staked and signed to distinguish from private properties.
- b. Within the dedicated local park acreage, Applicant to provide, at Applicants expense, the park's most needed active recreational facilities and amenities to include at least one (1) adult sized soccer field, multi-age playgrounds acceptable to M-NCPPC staff, a picnic area with 2 shelters, 8' minimum width hard surface trails within the park to serve the various facilities (10'-wide where needed for maintenance access), a drinking fountain, park signage and information kiosks, portable restroom pad and enclosure, appropriate fencing for safety purposes along the retaining wall (acceptable to M-NCPPC staff), park landscaping, and local park parking for at least 120 cars, including at least 60 spaces on the dedicated parkland. The area where the softball field was shown on the Preliminary Plan (area north of the historic house) must be graded and seeded to provide an open play field. The size and grading will be coordinated with the Parks Department. Parallel parking spaces along the park side of the adjacent roads should be appropriately striped and marked to delineate the individual parking spaces available for park users. Park dedication and facility layout to be substantially as set forth on the attached



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Park Site Exhibit, with final details of park design, engineering, grading and layout to be determined in coordination with, and acceptable to, M-NCPPC park staff prior to certified site plan approval. Facilities to be constructed to park standards and specifications after procurement by Applicant of appropriate park permit. Copies of applicable standards and specifications will be provided to Applicant by time of certified site plan approval.

- c. No retaining walls or stormwater management ponds or facilities to be located on dedicated parkland.
  - d. Applicant to construct hard surface and natural surface trails on dedicated parkland and throughout the community to connect open spaces, the elementary school and parkland together in an accessible, pedestrian friendly manner. Applicant to work with M-NCPPC staff prior to certified site plan approval to establish exact locations of needed trails in order to provide recreational opportunities for the communities and businesses within the subdivision. Trails within parkland to be constructed to park standards and specifications.
9. Maintenance Responsibility  
The Applicant, its successors/assignees, and/or the successor HOA shall be responsible for maintaining community-wide amenity features such as HOA playgrounds, HOA open spaces, retaining walls, parking facilities, streetscape elements and natural features.
10. Transfer Development Rights (TDRs)  
Prior to recording of each plat, the applicant shall provide verification that the numbers of TDRs relevant to that plat have been acquired. Applicant shall maintain a continuing calculation with each Site Plan, reflecting the number and type of approved dwelling units and the proportional number of associated TDRs under the formula established in the Development Plan and Preliminary Plan.
11. Moderately Priced Dwelling Units (MPDUs)  
The applicant shall comply with the following conditions of approval from the Department of Housing and Community Affairs in the memorandum dated April 25, 2007:
- a. The proposed development shall provide (12.5 percent) MPDUs (of the total number of dwelling units) on-site.
  - b. The Applicant will be required to provide an overall map of the location and number of MPDUs in the Cabin Branch community and a cumulative reporting with each detailed site plan.



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12. School Site

The Applicant shall comply with the conditions of approval from the Montgomery County Public Schools in the memorandum dated March 22, 2007.

13. Transportation

The applicant shall comply with the following conditions of approval from M-NCPPC-Transportation Planning in the memorandum dated May 31, 2007:

- a. The applicant must comply with the current and future State Highway Administration (SHA) and Department of Public Works and Transportation (DPWT) regulations and with the letters of support from SHA and DPWT attached hereto.
- b. The road improvements set forth in the Road Improvement Phasing Plan approved as part of the Phase I Preliminary Plan shall be open to traffic before building permits for the subsequent sub phase of development may be issued.
- c. The applicant must either obtain a waiver from DPWT to allow street trees in a panel less than six feet wide or make adjustments to their plan in order to provide for a minimum of six foot wide planting areas.
- d. The applicant must provide at least one handicapped-accessible crosswalk for pedestrians and bicyclists crossings between the adjacent land uses.
- e. The applicant must design all roundabout in accordance to FHWA/SHA guidelines.
- f. The applicant must provide minimum curb return radii of 30' on arterials, 25' on commercial/industrial, primary and secondary roads, 20' on tertiary roads and 15' on alleys, adjusted as necessary for local conditions such as trucks and school buses.
- g. The applicant must identify and obtain waivers from the Planning Board for horizontal curves that are less than minimum standard.
- h. Within 60 days of approval of the Infrastructure Site Plan, Applicant will prepare and submit a limited amendment to the Infrastructure Site Plan to provide for an Alternatives Analysis for that portion of West Old Baltimore Road between I-270 and Broadway Street, including a possible no-build option, for review and approval by the Planning Board, based on review by DPWT, M-NCPPC Staff and residents along West Old Baltimore Road. Based upon this analysis, Staff will provide a recommendation for approval by the Planning Board for the design parameters and construction of this portion



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of West Old Baltimore Road. The alternatives analysis shall study the following: a) vertical and horizontal alignment/typical sections; b) extent of easements necessary outside the right-of-way; c) potential impacts to existing septic systems, wells and structures; d) clearing and grading impacts; e) park impacts; f) location of the bike path; g) auxiliary turn lanes and traffic controls; h) sight distances; and i) the no-build option.

- i. The applicant must provide a pedestrian connection between the intersection of Streets O and J to the intersection of Streets T and H.

14. Forest Conservation

The applicant shall comply with the following conditions of approval from M-NCPPC-Environmental Planning in the memorandum dated May 22, 2007 and with the conditions of approval as specified in the Final Water Quality approval:

- a. The proposed development shall comply with the conditions of the final forest conservation plan. The applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits. No clearing or grading is permitted with the infrastructure plan.
- b. Record plat of subdivision shall reflect a Category I conservation easement over all areas of stream buffers and forest conservation.

15. Historic Preservation

The proposed development is subject to the following conditions of approval from the Historic Preservation Commission dated December 22, 2006:

- a. Parking lots will not be constructed within the environmental setting of the historic resource.
- b. The circular drive around the historic house will be maintained in gravel.
- c. Any tree 6' in diameter (DBH) or larger proposed to be removed within the environmental setting of the historic site will require approval by the Historic Preservation Commission.
- d. The proposed changes within the 5-acre environmental setting (i.e. new construction, grading changes, tree removal, fence installation, retaining walls and alterations to the historic house) will require review and approval through the Historic Area Work Permit process (HAWP).
- e. The environmental setting of the historic resource remains the original boundaries of Parcel 747, which is 5.31 acres in size.



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- f. The installation of activity lighting on the ball fields is prohibited.
  - g. The applicant will remove non-historic elements and rehabilitate the exterior of the house. The applicant will receive approval from the HPC for applicable projects.
16. Fire and Rescue  
The proposed development is subject to the conditions of approval from the Montgomery County Fire and Rescue Service dated March 7, 2007.
17. Stormwater Management  
The proposed development is subject to Stormwater Management Concept approval conditions dated May 13, 2004, unless amended by the Department of Permitting Services.
18. Common Open Space Covenant  
Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff during the detailed site plan process to insure that Applicant's recorded Homeowners Association Documents are incorporated by reference in the Covenant.
19. Development Program  
Applicant shall construct the proposed development in accordance with a Development Program. The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of the certified site plan. A development program for each detailed site plan shall include a phasing schedule to incorporate the following site plan elements: street tree planting, community-wide pedestrian pathways and recreation facilities, other pedestrian pathways and seating areas, clearing and grading, necessary roads and phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

The Development Program for the Infrastructure Plan shall include a phasing schedule as follows:

- a. Phasing of MPDUs.
- b. Grading and timing for the construction of the Local Park.
- c. Prior to the release of the 650<sup>th</sup> residential building permit, the Applicant shall obtain a building permit for the community pool and center.



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20. Clearing and Grading

The following may proceed upon approval of the Infrastructure Site Plan, Sediment and Erosion Control Plans and Forest Conservation Plan: a) clearing and mass grading for the roads being approved by this Infrastructure Plan and the local park and school site; b) installation of temporary sediment and erosion control devices; c) the installation of the trunkline sewer (DA 3326); and d) the installation of the water main along Maryland Route 121. No construction of roads, buildings or retaining walls may proceed until subsequent certified Site Plan approvals for each individual Site Plan. Notwithstanding the above, clearing and grading activities, with the exception of the water and sewer projects, may not be permitted beyond the limits of disturbance submitted as part of the current site plans for Nos. 820060180, 820060240, 820060290, 820060300, 820060350 and 820070140.

21. Certified Site Plan

Prior to certified site plan approval of Infrastructure and Roads Only Plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Development program and Site Plan Resolution.
- b. Undisturbed stream buffers.
- c. Limits of disturbance.
- d. Methods and locations of tree protection.
- e. Forest Conservation easement areas.
- f. MPDU, TDR, and recreation facility concept.
- g. Location of outfalls away from tree preservation areas.
- h. Environmental setting protecting the historic resource or site.

BE IT FURTHER RESOLVED that all site development elements as shown on Cabin Branch Infrastructure and Roads Only Site and Landscape Plan drawings stamped by the M-NCPPC on April 16, 2007, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County 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.*



If amended in accordance with recommended conditions, the proposed development is consistent with the approved Development Plan (G-806) in land use, density, location, and building height and development guidelines.

The nine binding elements from Development Plan G-806 are listed numerically and in italics, followed by the Planning Board finding:

a. *Transferable Development Rights and Moderately Priced Dwelling Units*

*The Property that is subject to 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 MXPd, is zoned RMX-1/TDR and will require the purchase of Transferable Density Rights (TDR's) for the development planned by Applicants. Based on calculations developed with M-NCPPC 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% multi-family) the 535-acre project will require 635 TDR's. The Preliminary Plan of Subdivision application(s) for the MXPd area and the remaining RMX-1/TDR area shall require the purchase of TDR's in conformance with this calculation.*

The 635 Transferable Development Rights will be provided for the portion of property zoned RMX-1/TDR. The number of MPDUs provided is in excess of the binding element by 26 for a maximum of 236 MPDUs.

b. *Off-Site Amenities and Features*

*By the time of issuance of building permits for the 100<sup>th</sup> dwelling unit in the Cabin Branch Community, which consists of the larger, mixed-use community of 535 acres 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.*

This binding element does not apply to the Infrastructure Plan since development standards and actual units are not proposed at this time. The Applicant is permitted to grade in accordance with Condition No. 20 which is consistent with this binding element.

c. *Trip Reduction Measures*

*At the time of Preliminary Plan of Subdivision, the Applicant, M-NCPPC 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.*

Trip reduction goals were established during the preliminary plan approval and will be further analyzed at the first development site plan phase. The parking ratios for the non-residential uses will be determined during the first site plan for that type of development. Trip reduction goals will be considered during that review and will be consistent with the proposed uses.

d. 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-NCPPC and DPWT approvals.*

The Applicant has provided a network of public streets in a grid pattern that is familiar to the neo-traditional type of development. The street network is patterned to develop a cohesive relationship with the variety of uses proposed in the Cabin Branch neighborhood. The public streets proposed are consistent with the Master Plan and hierarchy defined in the Development Plan.

e. Area D Street Network

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

Area D, between future A-302 (Newcut Road), Second Avenue and West Old Baltimore Road will be reviewed in more detail when the site plan for this portion of the site is submitted. This area will be further analyzed as part of the limited amendment required by Condition No. 13(h) to address impacts to the adjacent properties along this section of West Old Baltimore Road.

f. Street Character

*All streets will adhere to a pedestrian-friendly design to the extent practical, which places particular emphasis on a building line to frame the street, with parking in the rear. Within the core, pedestrian friendly uses including retail 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.*



The public streets have been designed to foster a pedestrian friendly environment, where possible, and to promote active streets that interact with the streetscape plan.

g. 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.*

A-307 has been designed as an open-section 80-foot-wide arterial road with green edges that line up with the entrance to Black Hill Regional Park. West Old Baltimore Road was not reviewed with the Infrastructure Plan in terms of impact to adjacent properties, including Black Hill Regional Park, but will be reviewed as a limited amendment. The road is proposed as a two-lane arterial roadway with changes to vertical and horizontal alignment. The Applicant is required to submit a limited amendment and alternatives analysis in accordance with Condition No. 13(h) to address impacts to adjacent properties including alignment, necessary easements, well and septic, clearing and grading, park boundaries, sight distance and a no-build option.

h. 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.*

This binding element does not apply to the Infrastructure Plan.

i. On-street Parking

*Applicants will include on-street parking on streets adjacent to retail facilities.*

On-street parking has been incorporated into many of the public streets and will be further analyzed with each development site plan application.

2. *The Site Plan meets all of the requirements of the MXPB and RMX-1/TDR zones and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the applicable requirements of the MXPB and RMX-1/TDR Zones as demonstrated in the project Data Table shown below. No development information is required or being provided with the Infrastructure and Roads Only Site Plan for numbers and types of units, setbacks, building height, green area and number of parking spaces. The first development site plan will



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establish the number and types of units, the minimum setbacks and building restriction lines, maximum building heights and coverage requirements in terms of lot area, open space and green space for the respective zones.

**Requirements of the MXPB/RMX-1/TDR zones**

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the MXPB/RMX-1/TDR Zones. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

**Data Table**

Development Standards Approved by the  
 Planning Board and Binding on the Applicant

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Total Tract Area:	535.04 Acres						
Zoning:	RMX-1/TDR (251.54 acres) MXPB (283.50 acres)						
Public Water System Category:	W-3						
Public Sewer System Category:	W-3						
Max. Density of Development:	1,886 residential dwelling units, 500 senior units and 2,436,000 square feet of non-residential <sup>1</sup>						
Unit Mix Required by the Clarksburg Master Plan:	<table> <tr> <td>One-family detached</td><td>45-55%</td></tr> <tr> <td>One-family attached</td><td>35-45%</td></tr> <tr> <td>Multi-family</td><td>10-20%</td></tr> </table>	One-family detached	45-55%	One-family attached	35-45%	Multi-family	10-20%
One-family detached	45-55%						
One-family attached	35-45%						
Multi-family	10-20%						

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No development information is required or being provided with the Infrastructure and Roads Only Site Plan for numbers and types of units, setbacks, building height, green area and number of parking spaces. All of these elements of the site plan will be established and reviewed during each development site plan submittal.

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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.*

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<sup>1</sup> The Development Plan (Local Map Amendment G-806) approved 1,676 market rate and 210 Moderately Priced Dwelling Units (total 1,886); however, the Preliminary Plan (12003110A) only approved 1,600 residential dwelling units, 1,538,000 square feet of non-residential and 500 elderly housing units. Phase II of the Preliminary Plan has been submitted for review to increase the total number of residential dwelling units to 1,886 and 2,436,000 square feet of non-residential. Phase II has not been approved.



a. Buildings and Structures

No buildings have been proposed with the Infrastructure and Roads Only Site Plan. Each development site plan will show the location of each building and structure. The historic building (#13/24) remains as a dominant structure in the center of the overall site that bifurcates the proposed park.

Retaining walls have been shown on the Infrastructure site plan and minimized to the extent possible to address grading concerns with the preliminary plan approval. A retaining wall exhibit was submitted and reviewed with the Infrastructure and Roads Only Site Plan. The retaining walls on the west side of the park property have decreased in height from 50 feet to three tiered, 30-foot-tall retaining walls at the highest point since the time of preliminary plan approval. The series of walls are expansive but have been minimized to the extent possible for safety and efficiency of the grading on the site. At the hearing, the Applicant agreed to further minimize the series of retaining walls in the park site area by grading and seeding the area north of the historic house to provide for an open play field.

b. Open Spaces

The plan proposes a significant amount of open space, which consists primarily of stream buffers, stormwater management facilities and the proposed park and school sites. The future site plans will have to provide the required green area consistent with the requirements of the RMX-1/TDR Zone and previous development plan and preliminary plan approvals. The future site plans will provide updated open space and green space calculations, which will consist of areas between the units and along the perimeter of the property, in addition to the green area network of stream valleys, stormwater management facility areas, and park and school site field areas.

c. Landscaping and Lighting

The proposed landscaping and lighting consists of a varying treatment within the public rights-of-way, as outlined in the Thematic Street and Park Character guidelines ("Thematic Plan") presented by the Applicant. All of the agencies have had an opportunity to review the placement, types and species and spacing of the street trees to avoid conflicts in the design phase and during construction. The Thematic Plan also identifies the type of plant material appropriate within the medians and roundabouts, as well as acceptable lighting and accent material for crosswalks and sidewalks.



However, the exact species and location of street trees will be identified with each development site plan, and will stress the character of the species and spacing associated with the particular use.

d. Recreation Facilities

The overall recreation facilities have been incorporated into the park and school site that include ball fields, playgrounds, picnic shelters and pathways. In addition to the programmed facilities, the development will provide for natural features such as the stream valleys with integrated trails. Recreation facilities are based upon a calculation of the number and type of unit provided within the development, as well as community facilities offered by the Applicant.

Each development site plan that includes residential development will need to be updated to show compliance with the M-NCPPC Recreation Guidelines and overall facilities guidelines for the Cabin Branch Development.

e. Vehicular and Pedestrian Circulation

Vehicular and pedestrian circulation is adequate, safe and efficient throughout the entire site.

The primary access points to the site are from multiple locations along MD 121 (Clarksburg Road), West Old Baltimore Road and future Little Seneca Parkway (A-302). The state is proposing intersection improvements at I-270 with Clarksburg Road and Little Seneca Parkway. Two roundabouts are proposed on Clarksburg Road at the first intersection (Street A) that provides primary access to the Gosnell tract to the north, and Adventist Healthcare and the retail section to the south. The second roundabout on Clarksburg Road is located at the intersection with 1<sup>st</sup> Avenue (Cabin Branch Avenue), which is the primary route to the retail center and a major spine within the community that connects to Little Seneca Parkway. Two internal roundabouts are proposed on Little Seneca Parkway at the intersections with 1<sup>st</sup> and 2<sup>nd</sup> Avenues.

Second Avenue is an arterial road and is the primary spine within the community that connects Clarksburg Road and West Old Baltimore Road. Two additional important access points to the site include Street G (Bryne Park Drive), which follows the eastern boundary of the school and park site and Street Z, which is the primary access to the school. Street Z also provides access to a future residential portion of the development that includes primarily one-family detached and attached housing.



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The overall Cabin Branch neighborhood will contain an eight-foot-wide shared use path (Class I bikeway) on the external boundaries of the site, including the north side of West Old Baltimore Road, that connects and continues to the east side to connect with the bike paths for the Summerfield Crossing (8-03034) and Martens (8-02039) developments. The bike path on West Old Baltimore Road connects with the bike path on the east side of Clarksburg Road (MD 121). This path terminates at the future interchange for I-270. Internally, the 8-foot-wide bike path follows Street Z on the west side of the proposed school site, and bifurcates the school and park site to connect with the alignment on Street G. The path follows the west side of Street G and H and the north side of Street P to finally connect to the proposed bike path on Little Seneca Parkway.

Five-foot-wide internal sidewalks will also be provided for all of the public streets to facilitate pedestrian circulation throughout the development.

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

No structures or uses are proposed with this application, with the exception of retaining walls. However, the infrastructure and internal grid system establishes the pattern of uses based upon location, importance of road network, location of natural resources and proposed uses identified as part of the approved preliminary and site plans. Each structure and use for the subsequent development site plan applications will be evaluated for compatibility with the existing and proposed adjacent development.

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.*

- a. Forest Conservation

The applicant, Cabin Branch LLC, has submitted a final forest conservation plan with the Infrastructure and Roads Only Site Plan. This plan will be the guide for all future development site plans, special exceptions, and mandatory referrals. The development shown on the forest conservation plan is conceptual in nature and is being refined with individual development site plans. Therefore, the applicant must amend the forest conservation plan with each future development site plan to properly depict the forest conservation plan including the final grades, infrastructure, lot layouts, and building locations.

The applicant is proposing to remove 64.77 acres of forest, retain 65.03 acres of forest and plant 73.21 acres of forest. The applicant will plant 36.77 acres of forest on site. Part of the property is developed using an optional method of development. Section 22A-12(f) of the forest conservation law requires properties developed under an optional method of development to meet certain forest retention requirements on site. The forest conservation plan indicates that the applicant will meet the conservation threshold onsite and that they will meet all planting requirements through a combination of onsite forest retention, onsite planting of unforested stream buffers, and landscape credit.

Under M-NCPPC's implementation of the Special Protection Area regulations, the Environmental Guidelines require accelerated reforestation of stream buffers within SPAs. Since the property includes land both in and out of the SPA and the tributaries drain to a common water body, the planting requirements will be treated as if the entire site were located within the Clarksburg SPA. Therefore, the Planning Board has required the forest conservation plan to include planting in the stream buffers after DPS approval of the first sediment control/grading permit and that the applicant provide a five-year maintenance period for all planting areas credited toward the forest conservation plan. In addition, the applicant is required to plant all onsite planting areas prior to being allowed to use offsite mitigation credits. Since the property is within the Clarksburg Special Protection Area, all off site reforestation areas should be directed to planting unforested areas within the SPA.

b. Tree Save

Environmental Planning staff previously requested the applicant to preserve a 68-inch diameter at breast height (dbh) sycamore tree that is located outside of the stream buffer and is in good condition. Staff first requested preservation prior to the rezoning case. The tree has a circumference of 213 inches, which is 85 percent of the County champion sycamore tree.

There is a condition of approval of the preliminary water quality plan requiring the applicant to *"minimize the amount of fill used throughout the site to reduce the loss of groundwater hydrology supporting the headwater wetlands, and to better preserve the hydrology necessary for existing vegetation in stream buffers. After minimization has been conducted, opportunities shall be examined at site plan to retain the 68-inch dbh specimen sycamore tree and reduce the need for extensive retaining walls"*. The applicant has worked to minimize amount of fill but has not adequately addressed this condition.



The applicant submitted "Sycamore Tree Removal Study" in June 2006 but has not updated that submission. The plan submitted in 2006 shows the tree in a stormwater management facility. The infrastructure site plan shows the tree in a median between a parking lot and a roadway. Therefore, a new study is required that reflects the layout on the infrastructure plan. This revised study should be reviewed concurrently with the appropriate development site plan.

c. Environmental Guidelines

The NRI/FSDs for the various properties included in this Site Plan identified the environmental buffers. Environmental buffers include wetlands and wetland buffers, floodplains, and streams and stream buffers. As part of the *Environmental Guidelines*, the stream buffer must be reforested. Where trees do not currently exist in the stream buffers, the applicant will plant new forests. The applicant will place forest conservation easements on the environmental buffers and all forest retention areas.

d. Stream Buffer Encroachments

The only encroachments into the environmental buffers associated with this plan are necessary stormwater management conveyances, some utilities, natural surface trails, widening of West Old Baltimore Road, and construction of A-302 (Little Seneca Parkway)/I-270 Interchange.

e. Protection of Seeps, Springs and Wetlands

One of the performance goals for this final water quality plan is to protect springs, seeps, and wetlands. The applicant has not provided DPS with sufficient information to determine what impacts deep cuts and fill areas will have on groundwater recharge and stream base nor does Environmental Planning believe sufficient information is submitted to protect springs, seeps and wetlands. Condition No. 2 of the May 13, 2004 DPS approval of the preliminary water quality plan requires the applicant to "*Provide a geotechnical study/evaluation of the potential effect that the proposed deep cut and fill areas will have on groundwater recharge and stream base flow.*" DPS is responsible for determining and ensuring the performance goals are achieved. It is M-NCPPC's responsibility to protect seeps, springs, and wetlands through the delineation of stream and wetland buffers.

The applicant has not addressed Condition No. 2 of DPS' approval of the preliminary water quality and this is reflected by Condition No. 2 of the DPS February 22, 2007 approval of the final water quality plan which

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states *"Additional geotechnical study and evaluation will need to be done to determine the feasibility of groundwater recharge at the proposed locations. It is likely that groundwater will be encountered below some of the end of lines sand filters. In this case additional upland recharge areas will be required. This may affect lot yield. Note that extra recharge volume was required in the Preliminary Water Quality Plan approved (150% of MDE requirement) due to the lack of open section roads and deep cuts and fills that are proposed."* The Planning Board incorporates the Environmental Planning memorandum dated May 22, 2007 requiring the applicant to address this comment prior to the approval of individual development site plans while there is still opportunity to provide the upland recharge.

g. Site Imperviousness

There are no impervious limitations within the Clarksburg SPA; however, the Special Protection Area regulations allow M-NCPPC to review imperviousness and to work with the applicant to reduce imperviousness. The estimated impervious amount proposed for the entire site is less than 45 percent. The impervious amount will be refined with the submission and approval of individual development site plans. Impervious data is not available for sites of this size and mixture of units and square foot of commercial/office space.

h. Site Performance Goals

As part of the final water quality plan approved with this Application, several site performance goals were established for the project:

1. Protect the streams and aquatic habitat.
2. Maintain the nature of onsite stream channels.
3. Maintain stream base flows.
4. Identify and protect stream banks prone to erosion and slumping.
5. Minimize storm flow runoff increases.
6. Minimize increases in ambient water temperatures.
7. Protect springs, seeps, and wetlands.
8. Minimize sediment loading.
9. Minimize nutrient loadings.
10. Control insecticides, pesticides, and toxic substances.

i. Stormwater Management

To help meet these performance goals, the stormwater management plan requires water quality control and quantity control to be provided through an extensive system of linked best management practices (BMPs).



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Thirteen extended detention dry ponds will provide stormwater quantity control. These facilities are designed with a maximum retention time of 12 hours for the one-year storm. Stormwater quality control is provided via a treatment train consisting of recharge structures, surface sand filters, bio-filtration structures, dry swales, structural water quality inlets and vegetated buffer filtering.

Redundant sediment control facilities are required during construction of the site. This means upland sediment traps will drain to secondary traps downgrade. DPS will not allow silt fences as only perimeter control.

The proposed stormwater management concept and preliminary water quality plan consists of on-site channel protection measures via thirteen extended detention dry ponds. These structures will provide channel protection volume for the one-year storm with a maximum detention time of 12 hours per state standards. Quality control will be provided via a treatment train that consists of recharge structures, surface sand filter (in series), biofiltration structures, dry swales structural water quality inlets (both filtering and flow-through) and vegetated buffer filtering. Since open-section roads will not be feasible for the majority of the site, additional water quality volume will be provided in the proposed end of outfall large surface sand filters.

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

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


BE IT FURTHER RESOLVED, that the date of this resolution is SEP 19 2007 (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).

At its regular meeting, held on Thursday, September 6, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Robinson, seconded by

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Commissioner Bryant, with Commissioners Hanson, Bryant, and Robinson voting in favor, and Commissioners Cryor and Lynch abstaining, **ADOPTED** the above Resolution, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 820050150- Cabin Branch Infrastructure and Roads Only Site Plan.

A handwritten signature in dark ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson, Chairman  
Montgomery County Planning Board





# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OCT 6 2008

**MCPB No. 08-117**  
**Preliminary Plan No. 12003110B**  
**Cabin Branch Amendment B**  
**Date of Hearing: April 3, 2008**

## MONTGOMERY COUNTY PLANNING BOARD

### RESOLUTION<sup>1</sup>

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on July 2, 2004, Cabin Branch, LLC, ("Applicant"), filed an application to amend a previously approved preliminary plan of subdivision that was approved for 1,600 residential dwelling units, 1,538,000 square feet of commercial space and 500 dwelling units for senior housing to allow an additional 286 residential dwelling units and an additional 882,000 square feet of commercial space for a total of 1,886 residential dwelling units, 2,420,000 square feet of commercial space and 500 dwelling units for senior housing on 540 acres of land located on property generally bordered by MD Route 121 to the west and north, Interstate 270 to the east and West Old Baltimore Road to the south ("Property" or "Subject Property"), in the Clarksburg Planning Area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 12003110B, Cabin Branch Amendment B ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum ("Staff Report"), to the Planning Board, dated March 21, 2008, setting forth its analysis, and recommendation for approval of the Application, subject to certain conditions; and

*DBL 9/19/08*  
 Approved for legal sufficiency  
 M-NCPPC Office of General Counsel

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

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WHEREAS, on April 3, 2008, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, the Planning Board held a public hearing ("Hearing") on the Application; and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the Hearing, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Bryant; seconded by Commissioner Robinson; with a vote of 3-0, Commissioners Bryant, Hanson, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan Amendment No. 12003110B, to allow 286 additional residential dwelling units and 886,000 square feet of additional commercial space on the Property, subject to the following conditions which supersede, in their entirety, any and all previously approved conditions of approval:

- 1) Applicant is bound by all binding elements for Local Map Amendment G-806.
- 2) Total development under this Application is limited to the following uses and density:
  - 1,886 residential dwelling units
  - 2,420,000 square feet of commercial space
  - 500 dwelling units of senior housing
- 3) The Applicant shall satisfy the following transportation improvements:

To satisfy Policy Area Transportation Review for the approved development under the original approval, the Applicant must:

- a. Construct, in accordance with the staging sequence referenced below, Newcut Road as a four-lane divided arterial roadway between West Old Baltimore Road and the eastern business district roadway parallel to I-270.
- b. Upgrade, in accordance with the staging sequence referenced below, West Old Baltimore Road to a two-lane arterial roadway standard between Broadway Avenue and Clarksburg Road (MD 121), as outlined in the Department of Public Works and Transportation's (now, Department of Transportation or "DOT") March 10, 2008, letter to M-NCPPC.



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- c. Construct, in accordance with the staging sequence referenced below, two parallel, two-lane business district roadways between Newcut Road and MD 121 in lieu of a four-lane divided arterial roadway.
- d. Upgrade, in accordance with the staging sequence referenced below, MD 121 to an arterial roadway standard between West Old Baltimore Road and I-270 and upgrade the interchange ramps of MD 121 and I-270 that provides for six-lanes of traffic (both ways) on the MD 121 bridge over I-270.

To satisfy Local Area Transportation Review (LATR) for the total build out of development, the Applicant must also provide the following improvements:

- e. Construct, in accordance with the staging sequence referenced below, the following improvement at the MD 121/I-270 northbound on/off ramp:
  - Add a northbound left-turn lane to provide for dual left turn lanes.
  - Add a separate westbound left-turn lane.
  - Signalize the intersection.
  - Widen the Clarksburg Road bridge (MD 121) over I-270 to accommodate one additional through lane in each direction and a media island subject to SHA's requirements.
  - Add a westbound through lane on MD 121. This third westbound through lane would be dropped at the I-270 southbound loop ramp.
  - Add eastbound right-turn lane for I-270 northbound ramp.
  - Provide two lanes on the I-270 northbound ramp.
  - Provide non-automobile transportation amenities which include 2 LED traffic signals, 2 bus shelters, 1 super bus shelter, (defined as a larger than standard bus shelter with heating and lighting), and 3 bike lockers subject to approval by DPWT. If any of the non-auto amenities described here are not acceptable to DPWT, the Applicant must provide other improvements (at the discretion of M-NCPPC-Transportation Planning staff) equal to mitigating the same level of traffic to pass LATR.

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- f. Construct, in accordance with the staging sequence referenced below, the following improvements at the MD 121/I-270 southbound on/off ramp:
  - Add a westbound through lane.
  - Signalize the intersection.
  - Add an eastbound lane to southbound on-ramp I-270.
- g. Construct, in accordance with the staging sequence referenced below, the following improvements along the MD 121 frontage:
  - Six-lane roadway section from the I-270 southbound on/off ramp intersection to the first site entrance (Street "A"/Whelan Lane). The entrance would include a two-lane roundabout with right-turn bypass lanes to add and drop the third lane for Clarksburg Road.
  - Four-lane roadway between Street "A"/Whelan Lane and First Avenue.
  - Two-lane section from First Avenue to West Old Baltimore Road and roundabout at West Old Baltimore Road at this intersection.

The preceding roadway improvements (3a through 3g) must be constructed in accordance with the sequence described in the Cabin Branch Roadway Improvement Phasing Table and associated Diagram dated March 20, 2008 (see Attachment to this Resolution). Construction of all roadway improvements tied to each phase must be complete and open to traffic prior to the issuance of any building permit for the next phase of development.

- h. Construct the following improvements at the MD 121/Gateway Center Drive intersection:
  - Reconfigure the existing intersection to provide two lanes for through movement to, and from, the east.

This improvement must be complete and open to traffic prior to the issuance of building permits for the 1400<sup>th</sup> residential unit (not including the 500 senior housing units) and for more than 1,500,000 square feet of commercial space.



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i. Construct the following improvements at the Stringtown Road Extended/ Gateway Center Drive intersection:

- Widen eastbound Stringtown Road Extended to provide dual left-turn lanes.
- Convert a southbound Gateway Center Drive through/right lane in to a through lane and construct a free right turn lane with a channelized median.

These improvements must be complete and open to traffic prior to the issuance of building permits for the 1400<sup>th</sup> residential unit (not including the 500 senior housing units) and for more than 1,500,000 square feet of commercial space.

j. Construct or participate on a pro rata share in the following improvements at the MD 121/Frederick Road (MD 355) intersection:

- Re-stripe northbound MD 355 to convert from a through-right and a right-turn lane to a through-left and a right-turn lane.
- Modify the traffic signal to meet the requirements of SHA traffic operation with new lane configuration.

These improvements must be complete and open to traffic prior to the issuance of building permits for the 1400<sup>th</sup> residential unit (not including the 500 senior housing units) and for more than 1,500,000 square feet of commercial space.

k. Construct or participate on a pro rata share in the following improvements at the MD 355/West Old Baltimore Road intersection:

- Widen eastbound approach of West Old Baltimore Road to provide for a separate right-turn lane
- Widen the northbound approach of MD 355 to provide for a separate left-turn lane and a three-lane section on MD 355 between West Old Baltimore Road and Brink Road.
- Widen southbound approach of MD 355 to provide separate right-turn lane at West Old Baltimore Road.

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These improvements must be complete and open to traffic prior to the issuance of building permits for the 1400th residential unit (not including the 500 senior housing units) and for more than 1,500,000 square feet of commercial space.

- I. Construct or participate on a pro rata share in the following improvement to MD 355 at Brink Road.

- Widen MD 355 south of Brink Road to a four-lane divided section to join the existing four-lane section at Willstone Manor Lane.

This improvement shall be complete and open to traffic before the issuance of 1400<sup>th</sup> residential building permit and for more than 570,000 square feet of commercial space.

- m. Prior to the issuance of 1,256 residential building permits (not including the 500 units of senior housing), widen the MD 121 northbound off-ramp to 2 lanes. Should the construction of a grade separated interchange at Newcut Road/I-270 be funded in the Maryland Consolidated Transportation Program by the time that the Applicant has obtained bids for the widening of the northbound off-ramp, the Applicant shall then transfer to SHA a sum equal to the actual bid cost of construction for the northbound off-ramp improvement for use in construction of the Newcut Road/I-270 interchange and such contribution shall be considered as having met the Applicant's obligation for such improvement.
  - n. If any of the road improvements identified in the above paragraphs either are now, or become obligations of other projects, applicants of other projects may participate in the joint funding of such improvements. The basis of participation on a pro rata share is the sum of total peak hour trips generated by the subject development over the sum of total peak hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement.
- 4) Prior to certification of the initial site plan, the Applicant, M-NCPPC Transportation Planning staff, and DPWT staff shall consider mutually acceptable trip reduction measures. The parking ratios for non-residential uses in the Cabin Branch Community will also be determined at the time of Site Plan review considering the trip reduction goals.
  - 5) All road rights-of-way shown on the approved preliminary plan must be dedicated, by the Applicant, to the full width shown in the Adopted June 1994, Clarksburg Master Plan unless otherwise designated on the preliminary plan.



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- 6) All road right-of ways shown on the approved preliminary plan must be constructed, by the Applicant, to the full width mandated by the Clarksburg Master Plan, and to the design standards imposed by all applicable road codes unless modified by DOT or the Montgomery County Department of Permitting Services ("DPS").
- 7) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan including: reforestation of the stream buffers starting in the first growing season after DPS issuance of the initial sediment control permit; and a 5-year maintenance period for all planted areas. Final forest conservation plan(s) to be approved at the time of site plan(s). The Applicant must satisfy all conditions prior to recording of plat(s) or DPS issuance of sediment and erosion control permits.
- 8) Record plat to reflect a Category I easement over all areas of forest conservation and stream valley buffers.
- 9) Record plat to reflect common ingress/egress and utility easements over all shared roadways and driveways.
- 10) Record plat to reflect to the Board of Education, dedication of an elementary school site as shown on the approved preliminary plan or as modified by Infrastructure Plan or Site Plans. Applicant to grade the site to elevations that are acceptable to MCPS and construct any retaining walls as are necessary to support the program requirements of an elementary school facility. The bounds of the school parcel shall exclude any retaining walls.
- 11) Applicant to convey to M-NCPPC, in fee simple, the agreed area of contiguous land that is located between the proposed elementary school site and proposed Fulmer Avenue (Street H), Bryne Park Drive and Stilt Street (Street J) and continuing south along the Little Seneca Tributary to West Old Baltimore Road. The northern portion of the conveyed land must include at least 10 acres of contiguous land that is suitable for active recreation uses divided only by the historic home (including circular driveway) which is to be dedicated to the HOA or other party acceptable to M-NCPPC staff. Parkland must be conveyed prior to recordation of plat for that particular land area and conveyed free of trash and unnatural debris. Park boundaries must be staked and signed to distinguish from private properties.
- 12) At the time of individual site plan review, the Applicant must work with M-NCPPC staff to finalize and clearly delineate the exact park dedication boundaries that are acceptable to Parks Department staff. Park boundaries

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shall be easy to identify, manage, sign and shall be clearly distinguishable from HOA property and private property.

- 13) No retaining walls or stormwater management ponds or facilities to be located on dedicated parkland.
- 14) Within the conveyed local park acreage, Applicant to provide, at Applicant's expense, the following active recreational facilities and amenities:
  - At least one (1) adult sized soccer field,
  - one (1) multi-age playground acceptable to M-NCPPC staff,
  - an open grass play area as prescribed below
  - a picnic area with two (2) shelters,
  - eight (8) foot minimum width hard surface trails within the park to serve the various facilities, except ten (10) feet wide where needed for maintenance access,
  - one drinking fountain,
  - park signage,
  - information kiosks,
  - a portable restroom pad and enclosure as determined by staff,
  - appropriate fencing for safety purposes along any retaining wall or steep slopes (as acceptable to M-NCPPC staff),
  - park landscaping,
  - Local park parking for at least 120 cars, including at least 60 spaces on the conveyed parkland. Parallel parking spaces along the park side of the adjacent roads should be appropriately striped and marked to delineate the individual parking spaces available for park users.

Park conveyance and facility layout to be substantially as set forth on the approved Infrastructure Plan, with final details of park design, engineering, grading and layout to be determined in coordination with, and acceptable to, M-NCPPC park staff prior to individual certified site plan approval. Facilities to be constructed to park standards and specifications after procurement by Applicant of appropriate park permit. Copies of applicable standards and specifications will be provided to Applicant by time of certified site plan approval.

- 15) The open grass play area adjacent to the historic house to include some relatively flat area(s) that is suitable for informal ball-type play. The final grading plan must incorporate this flat play area and be acceptable to M-NCPPC Parks Department staff.



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- 16) Applicant to construct hard surface and natural surface trails on conveyed parkland and throughout the community to connect open spaces, elementary school and parkland together in an accessible, pedestrian friendly manner. Applicant to work with M-NCPPC staff prior to certified site plan approval to establish exact locations of needed trails in order to provide recreational opportunities to the communities and businesses within the subdivision. The trails within parkland must be constructed to park standards and specifications.
- 17) Compliance with the DPS conditions of approval of the Preliminary Water Quality Plan and stormwater management concept letter dated, May 13, 2004.
- 18) Compliance with conditions of approval of DOT letter dated, May 14, 2004 and March 9, 2008 unless otherwise amended by DOT.
- 19) Access and improvement along Clarksburg Road (MD 121) and I-270 as required by the State Highway Administration ("SHA").
- 20) Clearing and grading on-site must be in accordance with the Infrastructure Site Plan; no recordation of plats prior to approval of certified site plan.
- 21) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 22) No encroachment into stream buffers for stormwater management or sediment control facilities, except for necessary outfalls and temporary sediment control facilities in unforested buffers, without prior approval by the Planning Board.
- 23) Applicant to work with M-NCPPC staff before individual site plan approvals to reduce onsite cut and fill from that shown on the preliminary plan, and minimize the height of retaining walls wherever possible.
- 24) Maintenance of common open space facilities, including retaining walls and historic structure to be addressed prior to approval of any and all subsequent site plan approvals.
- 25) A landscape and lighting plan must be submitted as part all future site plan applications for review and approval by M-NCPPC staff.
- 26) Staging sequence of development shall be revised as follows:

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The Preliminary Plan will remain valid for one hundred and twenty one (121) months from the date of mailing of the Planning Board Resolution for this Planning Board action. Record plats must be recorded based on the following staging sequence:

- Stage I (expires 31 months from the date of mailing of the Planning Board Resolution): 420 dwelling units, 125 senior housing units and 380,000 square feet commercial.
- Stage II (expires 61 months from the date of mailing of the Planning Board Resolution): 404 dwelling units, 250 senior housing units and 380,000 square feet commercial.
- Stage III (expires 91 months from the date of mailing of the Planning Board Resolution): 388 dwelling units, 125 senior housing units and 380,000 square feet commercial.
- Stage IV (expires 121 months from the date of mailing of the Planning Board Resolution): All remaining development.

Prior to the expiration period, the final record plat for all remaining lots within each phase must be recorded, or a request for an extension must be filed.

- 27) The Adequate Public Facility review for the Preliminary Plan will remain valid for one hundred and twenty one (121) months from the date of mailing of the Planning Board Resolution.
- 28) TDRs must be recorded in accordance with Section 59-C-10.3.132 and 59C-10.3.133 of the Montgomery County Zoning Ordinance.
- 29) Other necessary easements must be shown on the record plats.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The subject 540-acre property is located within the Cabin Branch Neighborhood of the 1994 Clarksburg Master Plan Area. The Master Plan states that the opportunity to provide a transit-oriented residential neighborhood is one of the most important public policy objectives. In summary, the Master Plan objectives are as follows:



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- Provide a mix of uses including employment.
- Encourage an employment pattern that is supportive of I-270 as a high-technology corridor.
- Create a transit-oriented land use pattern.
- Maximize access to the proposed open space system.
- Provide a suitable transition to the rural/open space character south of West Old Baltimore Road towards Boyds.
- Provide an interconnected roadway system.
- Create a strong neighborhood focal point by concentrating public and retail uses in the same general area.
- Place special emphasis on protection of the west fork of Cabin Branch because of its high water quality and tree cover.

The Cabin Branch Neighborhood is the only portion of the western side of I-270 that is proposed for significant residential development. Most of the development in the Cabin Branch Neighborhood is recommended to occur on the Subject Property. The Master Plan states the recommended mix of uses for this neighborhood as follows:

Residential	1,950 dwelling units plus MPDU units
Employment	2.4 million square feet
Public Uses	Places of worship, childcare, community building, elementary school, and park

This Application envisions a comprehensively planned, mixed-use, transit-oriented and pedestrian-friendly community consistent with the goals of the Clarksburg Master Plan. The Board notes that further refinement of the site design along MD 121 and West Old Baltimore Road should occur at time of individual site plan review to insure compatibility of the proposed project with the surrounding Ten Mile Creek and Boyds communities.

The Planning Board finds that the proposed conceptual development as shown on the Preliminary Plan drawing is in conformance with the goals and objectives of the Clarksburg Master Plan.

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

The proposed lots generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the Application has been reviewed pursuant to the Local Area Transportation Review ("LATR") guidelines establish in the Annual Growth Policy. A complete, updated, traffic study for this amended plan was reviewed by M-NCPPC, Transportation Planning staff, DOT, and SHA. The developer(s) of the project are required to construct and/or participate in numerous local and regional projects to meet the requirements of the LATR review. The transportation projects discussed in the Staff Report and required by the conditions of approval combine to meet the LATR requirements and are staged in a controlled sequence. The transportation projects also specify certain sidewalks, bikepaths, and shared use paths that will meet the pedestrian circulation requirements for the project. The Planning Board finds that the transportation projects will satisfy the LATR requirements; both vehicular and pedestrian access and circulation requirements are met through the conditions of approval.

Other public facilities and services are available and will be adequate to serve the proposed units. Public sewer and water service are available to the Property as testified to by MCDEP staff at the Hearing. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Property has appropriate access for fire and rescue vehicles. The Applicant is required to dedicate a school site to the Montgomery County Public Schools to address the future school needs of the Application. Other public facilities and services such as police stations, firehouses and health services are currently operating within the standards set by the Growth Policy resolution currently in effect. All other local utilities such as, electrical and telecommunications services are also available to serve the Property.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

Access and public facilities will be adequate to support the proposed lots and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the RMX-1/TDR and MXP zones as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Plan.



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4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The Planning Board had previously approved a preliminary forest conservation plan that considered the total development of the entire site. A final forest conservation plan was approved with the Infrastructure Plan. The forest conservation plan proposes removal of 58.97 acres of forest and retention of 71.58 acres. The developers will be required to plant 58.32 acres of forest to meet the requirements of the Montgomery County Forest Conservation Law under Chapter 22A of the Montgomery County Code. Since this is an optional method of development, the developers will be required to meet all forest conservation requirements on the Subject Property as shown on the final forest conservation plan.

Under the M-NCPPC's implementation of the Special Protection Area ("SPA") regulations, the Environmental Guidelines require accelerated reforestation of stream buffers within SPAs. Approximately 243 acres of the 540-acre site are within the Clarksburg SPA. Those portions of the site that drain to Cabin Branch, a Use I-P waterway, are not in the SPA except for two pods that were included because of the potential for groundwater contamination. The Cabin Branch tributary and the tributary immediately abutting and parallel to I-270, both drain to Little Seneca Lake. Since the property includes land both in and out of the SPA and the tributaries drain to a common water body, the Planning Board required that the planting requirements be treated as if the entire site were located within the Clarksburg SPA. Therefore, the Planning Board requires that the Applicant plant the stream buffers after DPS approval of the first sediment control/grading permit and that the Applicant provide a five-year maintenance period for all planting areas credited toward the forest conservation plan.

The Planning Board finds that the Application complies with the requirement of Chapter 22A.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the DPS that the Stormwater Management Concept Plan and SPA Water Quality Plan meet DPS's standards.*

A water quality plan is required for this development as part of the SPA regulations. Under the SPA law, DPS and the Planning Board have different responsibilities in the review of the water quality plan. DPS has reviewed and conditionally approved the elements of the final water quality plan under its purview. The Planning Board is responsible for determining if the site

imperviousness, environmental guidelines for SPAs, and forest conservation requirements have been satisfied. The Board finds that as conditioned the preliminary water quality plan meets the applicable requirements and should be approved.

6. *Other issues.*

The Planning Board heard testimony from three interested speakers at the Hearing. The first was Jim Clifford, Esq., representing the interests of the Miller family who reside on the south side of West Old Baltimore Road, and immediately adjacent to the Subject Property. Mr. Clifford spoke to the potential need for the Miller family home and property to be acquired for the future improvements to West Old Baltimore Road. He testified that the Miller family understood that their property was not needed for improvements to West Old Baltimore Road and had recently made \$80,000 in improvements to the home. More recently, the Millers learned that, due to wetland permitting issues for the nearby stream, the road will need to be expanded onto the Miller property and the house will need to be demolished. While not adamantly opposed to the development, Mr. Clifford asked on behalf of the Miller family that the Planning Board provide some assurance as to when the house and property would need to be acquired so that the Miller family could do some estate planning for the aged matriarch of the family.

The Planning Board also heard testimony from Greg Leck of DOT, who suggested that the improvements to West Old Baltimore Road were developer dependent. The developers and the Miller family would have to negotiate a purchase price for the required property. If such a settlement could not be achieved, only then would the developer be able to approach the County for a request to condemn the needed property. In response to this concern the Applicant's counsel indicated that the Applicant would be in contact with Mr. Clifford to start the negotiation process. The condemnation of the Millers home is beyond the scope of this proceeding.

The Planning Board also heard testimony from a Jim Cook, a resident on West Old Baltimore Road, who had a number of concerns with the Preliminary Plan. The first concern was with the phasing of the road improvements. Mr. Cook generally supported the phasing schedule that was tied to issuance of building permits, but expressed his belief that the improvements to West Old Baltimore Road and MD 355 were required too late in the development process. Mr. Cook was concerned that the intersection was already failing according to the LATR guidelines and that the improvement to this intersection should be accelerated in the phasing schedule since the development will add even more traffic prior to improvements to the intersection.



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The Applicant's counsel argued that the Applicant's obligations under the current Plan include more stringent conditions of approval for this intersection, above those recommended in the original approval for the Application (12003110A). He pointed out that these include additional improvements to the intersection and a requirement that they be completed by issuance of the 1400<sup>th</sup> building permit which was not specified in the original condition language. In response to query by the Board, Staff concurred with the Applicant's representative that the staging for traffic improvements for this intersection and all other roadways included in the Application will satisfy the LATR requirements in a timely manner. Based on this discussion and the details of the LATR review, the Board finds that the proposed staging for traffic improvements is appropriate.

Mr. Cook was also concerned about the park trail connections from the development to the Black Hill Regional Park. He suggested that the specifics of the connections should be fully developed within the context of the Preliminary Plan, not at site plan as the conditions of approval stipulate. The Board elected to retain the language of the conditions as proposed.

Mr. Cook generally supported the condition of approval that requires developer funds to be diverted to the I-270/Newcut Road interchange should this project be included in the Capital Improvements Program in a timely manner, but worried that the funds might be diverted to the MD 121 interchange instead. Staff responded that the proposed language will ensure the funds are applied correctly and the Board elected to retain the proposed condition of approval.

Mr. Cook also expressed concern that the future Homeowners Association for Cabin Branch may be unfairly saddled with cumbersome maintenance costs for the retaining walls planned within the Cabin Branch community. Staff stated that they shared these concerns and will continue to work to reduce the heights of retaining walls as part of the individual site plan reviews. The Planning Board agreed that site plan is the appropriate time to further address this concern.

Mr. Cook finally expressed concern about the inclusion of "two-over-two" units as single family, attached units in the unit count mix for the overall development. His concern was that by defining these units as single family attached, it would allow additional multi-family units to be built. This concern was echoed by Kathy Hulley, President of the Clarksburg Civic Association. Staff, however, testified that the Zoning Ordinance allows two-over-two units to be classified as single family attached if there is appropriate usable open "yard" space for each unit, which must be the case in this instance. The Board was satisfied that application of the Zoning Ordinance standards as part of the site

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plan review will prevent the unit mix of multi-family and single family attached from being skewed.

Ms. Hulley also agreed with Mr. Cook's concern about future HOA retaining wall maintenance costs and additionally expressed her own concerns about the look of the shopping center and the commercial center planned as part of the Application. It may be appropriate to address these issues as part of site plan review, but not in the context of a preliminary plan review. Ms. Hulley also took issue with the potential design of the water tower planned for the Cabin Branch community, a mandatory referral issue.

Finally, Ms. Hulley questioned the viability of the Limited Liability Corporation, Cabin Branch, LLC, the lead developer responsible for the infrastructure required for the Property, and who, if anyone, would be responsible should it fail as an entity. Her fear was that the HOA would ultimately become responsible for completion of the infrastructure.

In response to Planning Board query about this concern and the Board's ability to address it as part of a plan review, Legal staff advised that the Board's responsibility was to ensure that infrastructure be in place prior to, or commensurate with, development which the phasing schedule conditions require. The Applicant's counsel opined that while this concern may not be within the purview of the Planning Board, the Board's conditions of approval run with the land, not with individual developers. In the event of an unlikely failure of the LLC, or any of the individual developers, anyone who wished to develop on the Cabin Branch property would be subject to the same conditions of approval. The Applicant's counsel further argued that the LLC contains prominent members of the development community and are well capitalized. Based on this discussion, the Board is satisfied that while there is no guarantee of the LLC's survival, the conditions of approval of this Application will remain effective.

BE IT FURTHER RESOLVED, that the date of this Resolution is OCT - 6 2008 (which is the date that this Resolution is mailed to all parties of record); and

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

\* \* \* \* \*



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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a Resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Robinson, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, and Cryor, present and voting in favor of the motion, and Commissioners Alfandre and Presley abstaining, at its regular meeting held on Thursday September 25, 2008, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Royce Hanson, Chairman  
Montgomery County Planning Board

Exhibit #1  
PB Res. No. 08-117

## Cabin Branch On-Site Road Improvement Phasing Schedule 3/20/08

Approved Phasing 12003110A	Proposed Phasing 12003110B	Improvement(s)	Approved Development 12003110A	Proposed Development 12003110B
1.1		2nd Avenue (A-304 West) - from MD 121 to Street Q. 2-lane business district road	210 units 190,000 s.f.	
1.2		MD 121 – from Street Z to the I-270 interchange, 2-lane to 4-lane to 6-lane	210 units 125 Senior units 190,000 s.f.	
1.3		MD 121/I270 interchange and bridge improvements	210 units 125 Senior units 190,000 s.f.	
1.4	2.1	2 <sup>nd</sup> Ave (A-304 West) - Street Q to W. Old Balt. Rd., 2-lane business district road Newcut Rd. (A-302) – from 2 <sup>nd</sup> Ave to 1 <sup>st</sup> Ave, 4-lane divided road	194 units 125 Senior units 190,000 s.f.	57 units 101,250 s.f.
1.5	2.2	1 <sup>st</sup> Ave (A-304 East) – from MD 121 to Street I, 2-lane business district road	194 units 190,000 s.f.	57 units 101,250 s.f.
1.6	2.3	1 <sup>st</sup> Ave (A-304 East) – from Street I to Newcut Rd. (A-302), 2-lane business district road	194 units 125 Senior units 190,000 s.f.	57 units 101,250 s.f.
1.7	2.4	MD 121 – from W. Old Balt. Rd. to Street Z, 2-lane arterial	194 units 190,000 s.f.	57 units 101,250 s.f.
1.8	2.5	W. Old Balt. Rd. (A-7) – MD 121 to Newcut Rd., upgrade to 2-lane arterial	194 units 208,000 s.f.	57 units 101,250 s.f.
	2.6	Non-automobile transportation amenities		58 units 101,250 s.f.



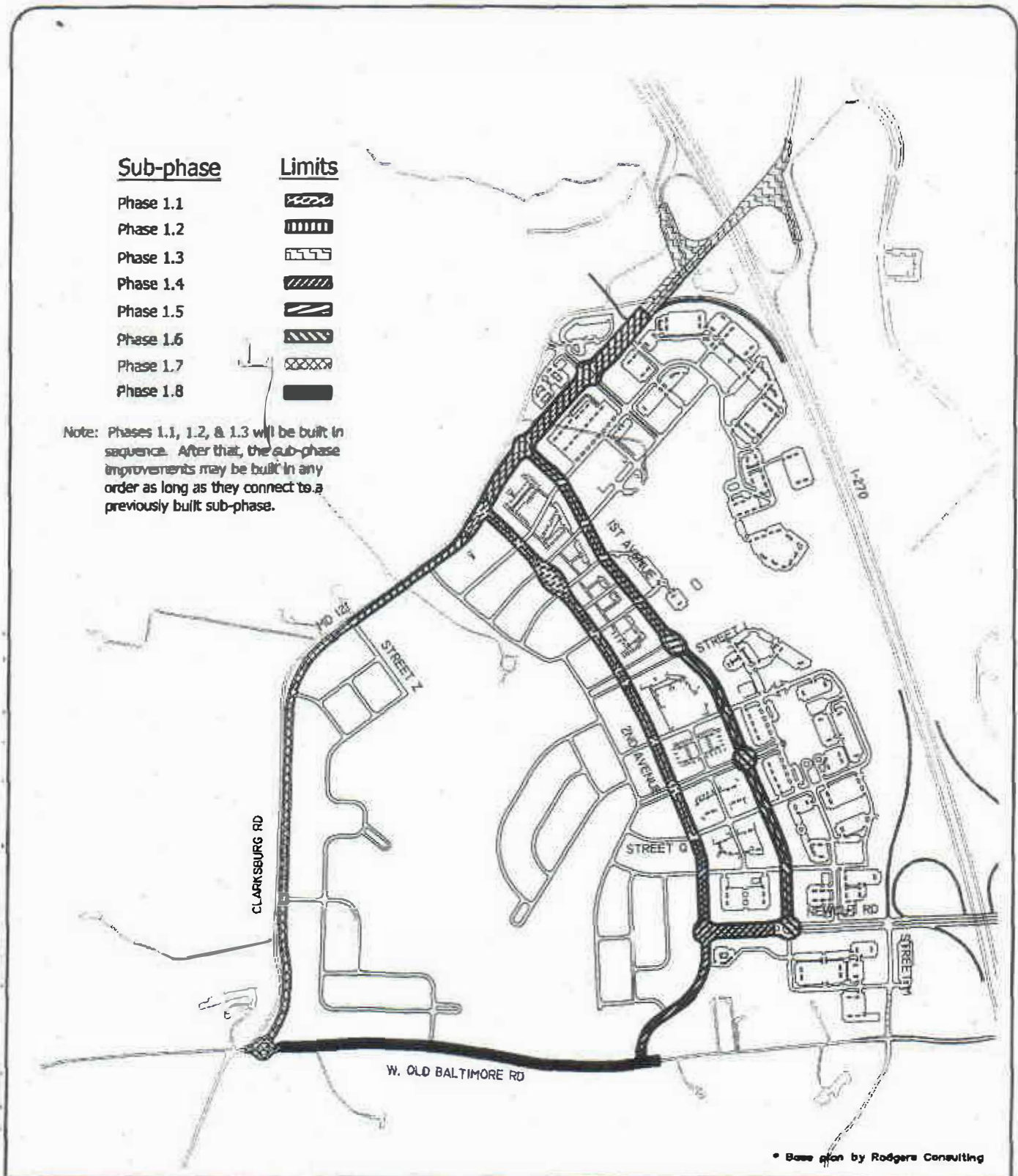
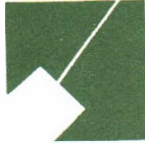


Figure 1  
Phase 1 Policy Area Improvement Sub-phasing



Cabin Branch  
Montgomery County, Maryland

**WELLS & ASSOCIATES, LLC.**  
TRAFFIC, TRANSPORTATION, and PARKING CONSULTANTS



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

MCPB No. 14-111  
Preliminary Plan No. 12003110C  
Cabin Branch  
Date of Hearing: December 4, 2014

**DEC 23 2014**

**RESOLUTION**

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

WHEREAS, on June 22, 2004, the Planning Board, approved Preliminary Plan Nos. 120031100 and 12003110A, creating 1,600 residential dwelling units, 500 senior units and 1,538,000 square feet of retail and employment on 540 acres of land in the RMX-1/TDR/MXPD zone, located generally bordered by MD Route 121 to the west and north, Interstate 270 to the east and West Old Baltimore Road to the south ("Subject Property"), in the Clarksburg Policy Area, Master Plan ("Master Plan") area; and

WHEREAS, on October 6, 2008, the Planning Board approved an amendment to the Preliminary Plan No. 12003110B to allow an additional 286 residential dwelling units and an additional 882,000 square feet of commercial space for a total of 1,886 residential dwelling units, 2,420,000 square feet of commercial space and 500 dwelling units for senior housing on 540 acres of land located on the Subject Property in the Master Plan; and

WHEREAS, on June 30, 2014, together with a site plan application to construct phase one consisting of 450,000 square feet of retail and restaurant uses, parking facilities and public amenities comprising a retail center (Site Plan No. 820140160, Cabin Branch Premium Outlets at Cabin Branch) within the multi-phased mixed-use development on the Subject Property, Simon/Clarksburg Development, LLC, on behalf of Cabin Branch Management, LLC ("Applicant"), filed an application for approval of an amendment to the previously approved Preliminary Plan(s) to revise the adequate public facilities and Preliminary Water Quality Plan on the Subject Property; and

WHEREAS, Applicant's application to amend the Preliminary Plan was designated Preliminary Plan No. 12003110C, Cabin Branch ("Preliminary 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 November 21, 2014, setting forth its analysis and

Approved as to  
Legal Sufficiency:

*[Signature]* 12/16/14  
8787 Georgia Avenue, Silver Spring, Maryland 20910  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org

Phone: 301.495.4605 Fax: 301.495.1320

E-Mail: mcp-chair@mncppc-mc.org



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Preliminary Plan No. 12003110C  
Cabin Branch  
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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 Wells-Harley, 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 Preliminary Plan No. 12003110C to revise the adequate public facilities and the Preliminary Water Quality Plan subject to the following conditions:<sup>1</sup>

- 1) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service ("MCDPS") – Water Resources Section in its stormwater management concept letter dated, August 25, 2014 and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 2) The Applicant must construct the pavement labeled "Premium Outlets Drive" from Clarksburg Road (MD 121) to the southern end of the Subject Property in accordance with the MCDOT Road Code Standard MC-219.01: Commercial/Industrial Dual Road Modified to provide vehicular access to buildings and the amphitheater.
- 3) The Applicant must construct the internal private drive loop road along the northern side of the retail buildings to the MCDOT Road Code Standard 214.02: Commercial/Industrial Road Modified; the 30-foot wide drive aisle shall not have travel lanes that exceed 12-feet in width.
- 4) The Applicant must construct the east-west private drive that connects Cabin Branch Avenue to "Premium Outlet Drive" in accordance with the MCDOT Road Code Standard MC-219.01: Commercial/Industrial Dual Road Modified.
- 5) 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

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

MCPB No. 14-111  
 Preliminary Plan No. 12003110C  
 Cabin Branch  
 Page 3

forth in the letter, which MCFRS may amend if the amendments do not conflict with other conditions of Site Plan approval.

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

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

*Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or required findings in the originally approved Preliminary Plan, and all findings and conditions not specifically addressed remain in effect.*

The lots did not change in configuration with this Amendment. Further, the retail and restaurant uses approved with this Amendment are part of the overall approvals for the MXPB area uses previously approved.

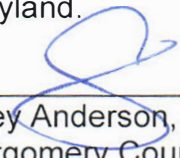
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 23 2014 (which is the date that this Resolution is mailed to all parties of record); and

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



Attachment B

MR. RICHARD BRUSH, MANAGER  
MCDPS-WATER RES. PLAN REVIEW  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. GREG LECK  
MCDOT  
100 EDISON PARK DRIVE  
4<sup>TH</sup> FLOOR  
GIATERSBURG, MD 20878

MR. RICHARD BRUSH, MANAGER  
MCDPS-SEDIMENT/STORMWATER  
INSPECTION & ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. LISA SCHWARTZ  
DHCA  
100 MARYLAND AVENUE  
4<sup>TH</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ATIQ PANJSHIRI  
MCDPS-RIGHT-OF-WAY  
PERMITTING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. ESHAN MOTAZEDI  
MCDPS-SITE PLAN ENFORCEMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. SUSAN SCALA-DEMBY  
MCDPS-ZONING  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MS. CHRISTINA CONTRERAS  
MCDPS-LAND DEVELOPMENT  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. GENE VON GUNTEN  
MCDPS-WELL & SEPTIC  
255 ROCKVILLE PIKE  
2<sup>ND</sup> FLOOR  
ROCKVILLE, MD 20850

MR. CHRISTOPHER ANDERSON  
MPDU MANAGER, DHCA  
100 MARYLAND AVENUE  
4TH FLOOR  
ROCKVILLE, MD 20850

MR. ALAN SOUKUP  
MCDDEP-WATER RESOURCE  
PLANNING  
255 ROCKVILLE PIKE  
2ND FLOOR  
ROCKVILLE, MD 20850

MARGARET FORD  
WOODFIELD INVESTMENTS  
3403 CUMMINGS LANE  
CHEVY CHASE, MD 20815

IAN DUKE  
VIKA, INC.  
20251 CENTURY BOULEVARD  
SUITE 400  
GERMANTOWN, MD 20874

MARK DRAKE  
KTGY  
8605 WESTWOOD CENTER DRIVE  
SUITE #300  
VIENNA, VA 22182

JAGDISH MANDAVIA  
VIKA MARYLAND LLC  
20251 CENTURY BOULEVARD  
SUITE 400  
GERMANTOWN, MD 20874

JOSEPH PLUMPE SUTDIO 39  
6416 GROVEDALE DRIVE  
SUITE 100-A  
ALEXANDRIA, VA 22310

SCOTT WALLACE  
LINOWES & BLOCHER, LLP  
7200 WISCONSIN AVENUE  
SUITE #800  
BETHESDA, MD 20814

Resolution No.:	<u>17-1002</u>
Introduced:	<u>February 4, 2014</u>
Adopted:	<u>February 4, 2014</u>

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

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By: District Council

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**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 12<sup>th</sup> and 14<sup>th</sup>, September 4<sup>th</sup>, 6<sup>th</sup>, and 12<sup>th</sup>, and October 10<sup>th</sup> and 15<sup>th</sup>, 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 RMK-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) *That the 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-Aquasco 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.<sup>1</sup> *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.

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<sup>1</sup> 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 MKPD 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 100<sup>th</sup> 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.

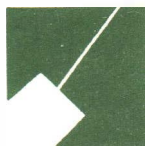
9. On-street Parking

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.





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

MCPB No. 19-080  
Preliminary Plan No. 12003110D  
Cabin Branch  
Date of Hearing: July 11, 2019

**JUL 17 2019**

**RESOLUTION**

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

WHEREAS, in an opinion dated June 22, 2004, the Planning Board approved Preliminary Plan No. 120031100 and 12003110A for 1,600 dwelling units, 500 senior units, and 1,538,000 square feet of commercial space, on 540 acres of land in the CRT – 0.5, C-0.25, R-0.25, H-130, CRT – 0.5, C-0.25, R-0.25, H-65 Zone and TDR zones, located approximately 1 mile south west of Clarksburg between Clarksburg Rd (MD 121), West Old Baltimore Road and I-270 (“Subject Property”), in the Clarksburg Policy Area and Clarksburg Master Plan (“Master Plan”) area; and

WHEREAS, on October 6, 2008, the Planning Board approved an amendment to Preliminary Plan No. 12003110A (MCPB No. 08-117) to allow 286 additional residential dwelling units and 886,000 square feet of additional commercial space on the Subject Property; and

WHEREAS, on December 23, 2014, the Planning Board approved an amendment to Preliminary Plan No. 12003110B (MCPB No. 14-111) to modify the finding of Adequate Public Facilities to require the construction of additional roadways and water quality improvements for the Subject Property; and

WHEREAS, on March 19, 2019, Cabin Branch Management, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan(s) to extend the period of validity for the Preliminary Plan as well as for the finding of Adequate Public Facilities for the Subject Property; and

WHEREAS, Applicant’s application to amend the preliminary plan was designated Preliminary Plan No. 12003110D, Cabin Branch (“Amendment”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the

Approved as to  
Legal Sufficiency:

*Matthew Kelly*

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
M-NCPPC Legal Department  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

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Planning Board, dated June 28, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 11, 2019 the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12003110D to extend the validity period of each of the four stages of the Preliminary Plan by three years (36 months) and to extend the finding of Adequate Public Facilities of the Preliminary Plan by three years (36 months) by modifying the following conditions:<sup>1</sup>

26) The Preliminary Plan will remain valid for 126 months (10.5 years) from the initiation of the Planning Board Resolution. Record Plats must be recorded based on the following staging sequence:

- Stage I (expires 36 months from the initiation date of this Planning Board Resolution): 420 dwelling units, 125 senior housing units and 380,000 square feet commercial.
- Stage II (expires 66 months from the initiation date of this Planning Board Resolution) 404 dwelling units, 250 senior housing units, 380,000 square feet commercial.
- Stage III (expires 96 months from the initiation date of this Planning Board Resolution): 388 dwelling units, 125 senior housing units, 380,000 square feet commercial.
- Stage IV (expires 126 months from the initiation date of this Planning Board Resolution): All remaining development.

27) The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for 126 months (10.5 years) from the initiation date for Preliminary Plan Amendment No. 12003110D.

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

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

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

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

*Adequate Public Facilities Validity – Section 50.4.3.J*

This Application was reviewed under 50.4.3.J.7 which sets the procedures to extend the validity period for an APF finding. The Planning Board has made the following findings:

- a. *Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.*
  - i. *The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period expires.*

The Application was filed on March 19, 2019. This is prior to the expiration date for Stage 1 of the Preliminary Plan of May 6, 2019.

- ii. *The applicant must submit a new development schedule or phasing plan for completion of the project for approval.*

This application modifies the approved development schedule as follows (Table 1):

Table 1: Approved and Proposed Staged Validity Period

Stage	Approved Development	Preliminary Plan Validity Expiration*
Stage I	420 dwelling units 125 senior housing units 380,000 square feet commercial	August 2022



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Stage II	404 dwelling units 250 senior housing units 380,000 square feet commercial	February 2025
Stage III	388 dwelling units 125 senior housing units 380,000 square feet commercial	August 2027
Stage IV	All Remaining Development	February 2030

\*based on estimated month of Preliminary Plan initiation

iii. *For each extension of an adequate public facilities determination:*

(a) *the applicant must not propose any additional development above the amount approved in the original determination;*

The Applicant does not propose any development beyond that approved in the original determination.

(b) *The Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;*

No additional public improvements are being required.

(c) *The Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest.*

A full review of the Property's transportation adequacy was conducted for the 2008 Preliminary Plan No. 12003110B (Attachment B of the Staff Report). Site Plan 820050150 and its amendments A-G provided the infrastructure framework for the development. The Applicant has provided significant investment in public infrastructure, including the reconstruction and rerouting of MD-121 and West Old Baltimore Road west of I-270, the improvement of the MD-212/I-270 interchange which included a new overpass, and the construction of Broadway and Cabin Branch Avenues.

Additionally, a traffic study (Attachment C of the Staff Report) was conducted for the Clarksburg Premium Outlets in 2014. The study found that major intersections would continue to operate well below the 1,425 Critical Lane Volume ("CLV") congestion threshold for the

major intersections detailed in Table 5. The Subject Property is therefore found to be in line with the original expectations of the existing APF determination with no need for an additional study to be conducted at this time. An extension will not be adverse to the public interest.

Table 5: Future Congestion Projections

Intersection	Total Future AM Peak Hour CLV (1,425 Standard)	Total Future PM Peak Hour CLV (1,425 Standard)
Clarksburg Road (MD 121)/ I-270 NB off-ramp	762	1,118
Clarksburg Road (MD 121)/ I-270 SB off-ramp	610	883
Clarksburg Road (MD 121)/ Goldeneye Ave (Whelen Rd)	614	770
Clarksburg Road (MD 121)/ Cabin Branch Avenue	483	669

Source: Clarksburg Premium Outlets Local Network Transportation Analysis. Wells and Associates, Inc. April 2, 2014

*(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.*

Not Applicable.

- b. The Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii if the applicant shows that financing has been secured for either:*
- i. completion of at least one new building in the next stage of the amended development schedule; or*

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*ii. completion of infrastructure required to serve the next stage of the amended development schedule.*

The Applicant has constructed most of the major infrastructure needed to serve the remaining stages of the project, including improvements to major public highways, the construction of new internal roads and avenues, as well as the provision of water, sewer, and electric utilities.

*c. Exclusively residential subdivisions.*

This Application is being reviewed under section e; this finding and subsequent sub-findings are not applicable.

*d. Nonresidential or mixed-use subdivisions.*

This Application is being reviewed under section e; this finding and subsequent sub-findings are not applicable.

*e. The Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:*

*i. the preliminary plan for the development required a significant commitment of funds by the applicant, amounting to at least \$3 million, as adjusted annually by the consumer price index, to comply with specified infrastructure conditions;*

The Applicant has provided significant investment in public infrastructure, including the reconstruction and rerouting of MD-121 and West Old Baltimore Road west of I-270, the improvement of the MD-212/I-270 interchange which included a new overpass, and the construction of Broadway and Cabin Branch avenues. The combined investment in these projects exceeds \$90 million (Attachment D of the Staff Report).

*ii. the applicant has met or exceeded the required infrastructure conditions during the original validity period; and*

*iii.*

The Applicant has met and exceeded the required infrastructure conditions during the original validity period for the project. The Applicant has constructed most of the major infrastructure needed to serve the remaining stages of the project, including improvements to major public highways, the construction of new internal roads and avenues, as well as the provision of water, sewer, and electric utilities.



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*iv. the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master plan.*

The Applicant's satisfaction of the required infrastructure conditions has provided a significant, necessary public benefit, meeting the goals of the Clarksburg Master Plan. This includes the construction of Cabin Branch Avenue, reconstruction of Clarksburg Road and the Clarksburg Road MD-212/I-270 interchange.

#### *Preliminary Plan Validity – Section 50.4.2.H*

The Preliminary Plan Amendment application requested a three-year (36-month) validity extension for each of the 4 stages of development for the Preliminary Plan. These 36 months are in addition to any months of validity remaining for each stage of development as approved by Preliminary Plan No. 12003110B and extended by County Council legislation. The Board considered the following analysis and findings as part of this approval:

##### *1. Extension Requests*

- a. *Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.*

The Applicant submitted a timely plan validity extension request to the Planning Board. The request was received on March 19, 2019 which is prior to the validity expiration for Stage I of the development on May 6, 2019.

- b. *The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.*

Not applicable.

- c. *The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.*

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JUL 17 2019 (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 Fani-González, seconded by Commissioner Cichy, 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, July 11, 2019, in Silver Spring, Maryland.

  
 \_\_\_\_\_  
 Casey Anderson, Chair  
 Montgomery County Planning Board

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# G-806 Binding Elements

Adopted September 9, 2003

## **1. Transferable Development Rights and Moderately Priced Dwelling Unit's**

The property that is the subject of this application (283.5 acres) is part of a larger, mixed-use community planned for 535.5 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 100<sup>th</sup> 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 MNCPPC 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 MXPD 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).