



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Agenda Date: 11/13/03  
**Reconsideration Request**

**OFFICE OF  
THE GENERAL COUNSEL**

**(301) 495-4646  
FAX (301) 495-2173**

## **REQUEST FOR RECONSIDERATION**

### MEMORANDUM

TO: Montgomery County Planning Board

VIA: Michele Rosenfeld, Associate General Counsel  
*MR (handwritten)*

FROM: Tariq El-Baba, Associate General Counsel, (301) 495-4646  
*TAB (handwritten)*

RE: Reconsideration Request for Westchester  
Preliminary Plan No. 1-02023

## **I. BACKGROUND**

### **A. Parties Seeking Reconsideration:**

1. Robert Harkins
2. Stephan B. and O.S. Kurylas
3. Chun S. and Y.S. Ro

### **B. Action Sought To Be Reconsidered:**

Preliminary Plan No. 1-02023

Date of Opinion: June 10, 2003

Action Taken: Approval of Preliminary Plan, with conditions.

### **C. Planning Board Vote:**

- Motion to approve site plan with conditions: Motion made by Commissioner Wellington, seconded by Commissioner Perdue.
- Commissioners voting in favor of the motion: Commissioners Berlage,

- Perdue, Wellington, and Robinson
- Commissioner Bryant was necessarily absent

**D. Procedural History of the Preliminary Plan**

On September 14, 2001, Press Real Estate Services ("Applicant") submitted an application for the Planning Board's consideration of the above-captioned Preliminary Plan. Originally, Applicant sought to create two lots on .4784 acres of land in the R-90 zone. A public hearing was held on January 17, 2002. The Staff Report indicates that Staff recommended the approval of one lot only. The Applicant requested a deferral of the case.

On May 22, 2003, a second public hearing was held on the Preliminary Plan for the approval of one lot on .4784 acres. As noted, above, the Planning Board voted to approve the Preliminary Plan, subject to conditions. On June 10, 2003, Staff mailed the Planning Board Opinion for this case. On July 22, 2003, the Planning Board received a reconsideration request ("July Request"), which was rejected as untimely because it was received forty-two days after the mailing date of the opinion (thirty-two days after the date any requests for reconsideration would be due).<sup>1</sup>

In early October, Legal Staff was advised by one of the instant requesters, Mr. Harkins, that he is a party of record to the Preliminary Plan but was not included on the Planning Board's mailing list. Legal Staff has confirmed that Mr. Harkins, a speaker at the January 17, 2002 public hearing was not included on the mailing list and, therefore, would not have received notice by mail of the May 22, 2003 public hearing; and, furthermore, Mr. Harkins would not have received a copy of the Preliminary Plan Opinion.

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<sup>1</sup> The July Request only identified the residents of 1808 Blueridge Avenue and 1805 Blueridge Avenue as not having received notice of the May 22, 2003 public hearing. 1808 Blueridge Avenue is included on the mailing list of both the public hearing notification letter and the opinion. 1805 Blueridge Avenue, which the July Request identifies as a confronting property, is not a valid address. The only properties confronting the subject property are 1801 and 1807 Blueridge Avenue, both of which properties are included on the mailing lists of the public hearing and the opinion. Additionally, the July Request was grounded on an erroneous assumption that the Planning Board did not follow the proper notification procedures—citing, incorrectly, the notification process for Master Plans, which is codified at MONTGOMERY COUNTY CODE § 33A-6.

### **E. Summary of Proponents' Grounds For Reconsideration:**

By electronic mail message, transmitted October 29, 2003 (Attachment One), and by letter, hand-delivered to the Legal Department on or about October 31, 2003 (Attachment Two), Robert Harkins, the Kurylases and the Ros (the "Requesters"), collectively request reconsideration of the Planning Board's decision approving the Preliminary Plan for Westchester ("Preliminary Plan").

The Requesters assert that they did not receive notice of the May 22, 2003, public hearing, which was mailed on May 9, 2003 (Attachment Three); and, moreover, that they did not receive a copy of the Planning Board opinion, which was mailed on June 10, 2003 (Attachment Four). As such, the Requesters contend that this reconsideration request is timely submitted because they were unaware that a hearing had been held on this case and, furthermore, that an opinion had been issued memorializing the Board's decision.

### **II. RULES APPLICABLE TO RECONSIDERATION REQUESTS**

In accordance with the approved and adopted rules and procedures for the Montgomery County Planning Board, any party of record may, in writing, request the Planning Board to reconsider its determination on an action taken by the Board. The Planning Board must receive the request within ten days of the mailing date for the Opinion reflecting the action at issue. The Planning Board may, however, waive the period for filing a reconsideration request if it determines that just cause exists to do so.

The written request alone shall be the basis upon which the Board will consider whether reconsideration is warranted, although a Board member may seek clarifications from staff or other persons present to aid in her/his consideration. No party of record (including the party seeking reconsideration) may present testimony regarding the reconsideration request, unless called upon by a Board member to respond to a question. A party seeking reconsideration is encouraged to be thorough in drafting a written request, because the Board's consideration of the issues will be limited to the contents of the written request and any staff consideration of those issues.

The Planning Board agenda routinely reserves time to allow the Board to consider any reconsideration requests that may have been transmitted to the Board. The Rules do not provide for notice of a reconsideration hearing, nor is it advertised on the agenda. Staff does attempt to advise the party requesting reconsideration of the date for which it is scheduled for Board consideration.

Staff forwards to the Board a reconsideration request shortly after its receipt by the Commission. Ordinarily, staff does not make a recommendation to the Board relative to whether the Board should or should not support a reconsideration request, except in those cases where a legal flaw occurred (for instance, a party entitled to notice did not receive notice of the public hearing). When the Chairman calls the item, any Board member may pose questions about points raised in the letter. Thereafter, only a Board member that voted in favor of the motion (action) for which reconsideration is being requested may make a motion to reconsider. If a motion is made to reconsider, any Board member may second the motion. As always, to succeed, the motion carries if supported by a majority of Board members then present and voting.

If no motion is made or a motion fails, either for lack of a second or for insufficient votes, the prior action stands unaltered in all respects, including time for administrative appeals.

If a motion to reconsider carries, no further action or consideration will occur at that time. Rather, the prior action is extinguished and staff will schedule the matter for public hearing, upon due notice, at a later date. The Board, at that time, will conduct a *de novo* hearing on the issue(s) that were the subject of the reconsideration request. This may be an entire project application, or may be narrowed in scope to specific issues.

Grounds for reconsideration, as specified in the rules, are as follows:

1. the Board's action did not conform to relevant laws or its rules of procedure;
2. the Board was not timely provided pertinent and significant information relevant to the Board's ability to take the action at issue, and the request must include a statement explaining why the information was not provided at the time of the public hearing;
3. other compelling reasons.

The Planning Board, in its sole discretion, is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Any and all materials submitted as part of the reconsideration request are excluded from the public hearing administrative record, unless submitted in the record prior to its closing.

### **III. STAFF RECOMMENDATION**

Of the five Requesters, only Mr. Harkins is not included on the mailing list of either the May 22, 2003 public hearing or the Preliminary Plan Opinion. Pursuant to § 2.C. of the Planning Board's Rules of Procedure, notice of a public hearing on a preliminary plan application "shall be sent to . . . all . . . parties of record." Therefore, it is Legal Staff's opinion that, because of his status as a party of record to the Preliminary Plan, the Commission was obligated to mail to Mr. Harkins notice of the May 22, 2003, public hearing and, subsequently, a copy of the Planning Board's Opinion in this case.

It is Legal Staff's opinion that Mr. Harkins has provided "a clear showing that the action of the Board did not conform to . . . its rules of procedure . . . ." Montgomery County Planning Board Rules of Procedure § 11. Therefore, Legal Staff recommends that the Planning Board:

1. WAIVE the ten-day period for filing this reconsideration request; and further
2. GRANT the instant request for reconsideration of the Preliminary Plan.

If the Planning Board votes to grant this request for reconsideration, Planning Staff intends to bring the case before the Board in public hearing in an expedited time frame, pending coordination with the applicant.

### **ATTACHMENTS**

- ONE: Reconsideration Request Letter, sent via electronic mail, October 29, 2003
- TWO: Reconsideration Request Letter, hand-delivered to Commission Legal Department on or about October 31, 2003
- THREE: Notice of the May 22, 2003, public hearing, mailed May 9, 2003
- FOUR: Preliminary Plan Opinion, mailed on June 10, 2003

**El-Baba, Tariq**

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**From:** Rob Harkins [harkhick@erols.com]  
**Sent:** Wednesday, October 29, 2003 1:27 PM  
**To:** El-Baba, Tariq  
**Subject:** Second Time Sent Reconsideration Request Preliminary Plan No. 1-02023 (Westchester)

TO: Tariq A. El-Baba, Associate General Counsel  
Office of the General Counsel  
Montgomery County Department of Park and Planning  
8787 Georgia Avenue  
Silver Spring, Maryland

FROM: Robert Harkins  
11402 Channing Dr.  
Silver Spring, MD 20902

Stephan B. & O.S. Kurylas  
1807 Blueridge Ave.  
Silver Spring, MD 20902

Chun S, & Y.S. Ro  
1801 Blueridge Avenue  
Silver Spring, MD 2090s

RE: Reconsideration Request  
Preliminary Plan No. 1-02023 (Westchester)

Dear Mr. Tariq A. El-Baba:

As per The Rules of Procedure For The Montgomery County Planning Board Maryland-National Capital Park And Planning Commission (Revised November, 1993) and attached to your letter of September 23, 2003 to Ms. Kathleen Michels of the Upper Sligo Civic Association; We the above referenced and below signed request that a new public hearing be held on Preliminary Plan No. 1-02023.

Section 2-Notice (C.) requires that "ten calendar days prior to the public hearing on the application, the Planning Board staff shall mail notices of the date and location of the hearing. This notice shall be sent to all parties previously notifies, and to all additional parties of record."

WE ARE ALL PARTIES OF RECORD who spoke at the January 2002 hearing on this matter and were not notified of the May, 2003 hearing.

As stated in your letter of September 23, 2003, Pursuant to Section 11-Reconsideration (A) of the Rules of Procedure, you as staff counsel, denied the Neighbors of Upper Sligo Creek Watershed's petition based on its "untimely filing." WE note that Section 11 requires that the planning board must have received any reconsideration request within 10 days of the opinion mailing date. However, We all certify and submit that not only were none of us notified of the May hearing but in addition, none of us who are adjoining and confronting property owners and/or parties of record received the written opinion via United States Mail or in any other way.

We therefore demand as required by Section 11 (A) (1), (2) & (3) and (B), that our request for reconsideration of the above matter be presented to the Board at its next regularly scheduled meeting. We respectfully request that the petition attached to Ms Kathleen Michels' letter of

TO: El-Baba, Associate General Counsel

**ATTACHMENT ONE**

September 23, 2003, signed by more that 100 of our neighbors and

attached hereto, be submitted as additional evidence of the importance of the board's reconsideration of its decision.

We the undersigned Certify that the above statements are true to the best of our knowledge and information. We know that if we have willfully made untrue statement we may be liable to punishment by law.

SIGNED & DATED:

**TO:** Tariq A. El-Baba, Associate General Counsel  
Office of the General Counsel  
Montgomery County Department of Park and Planning  
8787 Georgia Avenue  
Silver Spring, Maryland

**FROM:** Robert Harkins                      Stephan B. & O.S. Kurylas  
11402 Channing Dr.                      1807 Blueridge Ave.  
Silver Spring, MD 20902              Silver Spring, MD 20902

Chun S, & Y.S. Ro  
1801 Blueridge Avenue  
Silver Spring, MD 2090s

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ATTACHMENT TWO



September 23, 2003, signed by more than 100 of our neighbors and attached hereto, be submitted as additional evidence of the importance of the board's reconsideration of its decision.

We the undersigned Certify that the above statements are true to the best of our knowledge and information. We know that if we have willfully made untrue statement we may be liable to punishment by law.

SIGNED & DATED:

Robert W Harkin Jr

10/24/03

Chris Soto Ro 10/31/03

Laura Y Ro 10/31/03

Stephan & Olga Kurylas 10/31.03



May 9, 2003

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board  
**OFFICIAL NOTICE OF PUBLIC HEARING**

**Subdivision Plan  
For Public Hearing by the  
Montgomery County Planning Board  
On**

**THURSDAY, MAY 22, 2003**

The following subdivision plan is scheduled for public comment, discussion and a vote by the Montgomery County Planning Board, at a public hearing on **Thursday, May 22, 2003**. The hearing will be held in the first floor auditorium of The Maryland-National Capital Park and Planning Commission's Montgomery County Regional Office, 8787 Georgia Avenue, Silver Spring, Maryland. You may speak to the Planning Board about this plan by signing up at the public hearing.

**Name of Plan: Westchester**

**Subdivision File Number: 1-03023**

**Number of Lots: 1**

**Number/Type of Proposed Unit(s): 1 single family detached dwelling unit**

**Current Zoning: R-90      Acres: 0.4784**

**Location: On the south side of Bluemridge Avenue, approximately 100 feet east of Nairn Road**

**Master Plan Area: Kensington/Wheaton, PA-31**

To review the complete application file, to obtain information about proposed staff recommendations, or to offer your comments on the plan to the staff, please contact the Development Review Division of the Montgomery County Planning Department at (301) 495-4595. See the fact sheet on the reverse side for details on submitting written comments to the Planning Board. If you plan to comment at the hearing, the Board encourages you to contact the Development Review Division in advance.

A staff recommendation will be available three days before the public hearing. You can obtain a copy of the recommendation in the Development Review Division between 8:30 a.m. and 5:00 p.m. If the approval of a final water quality plan is required as part of the project approval, then the Board will consider such plan at this public hearing.

To obtain an approximate time for this item on the Planning Board's agenda, please call Marion Joyce, Community Relations Manager, (301) 495-4600, after **Monday, May 19, 2003**.

Thank you for your interest in Montgomery County's future!  
MONTGOMERY COUNTY PLANNING BOARD, 8787 GEORGIA AVENUE  
[www.mnccppc.org](http://www.mnccppc.org)

**ATTACHMENT THREE**

1-02023 Westchester

Osher & A. Friedman  
1808 Blueridge Avenue  
Silver Spring, Maryland 20902

James G., Jr. & L. F. Shirlen  
1807 Reddie Drive  
Silver Spring, Maryland 20902.

Richard R. & M.B.W. Price  
1805 Reddie Drive  
Silver Spring, MD 20902

Irving D. & J. A. Markman  
1803 Reddie Drive  
Silver Spring, MD 20902

Stephan B. & O. S. Kurylas  
1807 Blueridge Avenue  
Silver Spring, MD 20902

Chun S. & Y. S. Ro  
1801 Blueridge Avenue  
Silver Spring, MD 20902

Press Real Estate Services  
Larry Press  
9905 Hall Road  
Potomac, MD 20845

Fowler Associates, Inc.  
Gary Fowler  
255 N. Washington St  
Suite 300  
Rockville, MD 20850

Stuart Rochester  
Columbia Road Citizens Assn.  
901 Greencastle Road  
Burtonsville, MD 20866

Mr. Ed O'Hara  
Cloverly/Fairland/White Oak CAC  
12510 Prosperity Drive, #150  
Silver Spring, MD 20904

Cynthia Rubenstein  
Allied Civic Group  
1601 Manchester Road  
Silver Spring, MD 20901

Barbara Foresti  
White Oak Area Civic Coalition  
301 Willington Drive  
Silver Spring, MD 20904

Bernard Fridovich  
White Oak Area Civic Coalition  
~~414~~ Sara Drive  
Annapolis, MD 21401

Mr. Stuart Rochester  
Cloverly/Fairland/White Oak CAC  
2901 Greencastle Road  
Burtonsville, MD 20866

Ms. Barbara Foresti  
Cloverly/Fairland/White Oak CAC  
301 Willington Drive  
Silver Spring, MD 20904



**Date Mailed: June 10, 2003**  
**Action:** Approved Staff Recommendation  
**Motion** of Comm. Wellington, seconded by  
Comm. Perdue with a vote of 4-0;  
Comms. Berlage, Perdue,  
Robinson and Wellington voting  
in favor  
Comm. Bryant necessarily absent

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

*May 15, 2003*

Preliminary Plan 1-02023  
NAME OF PLAN: WESTCHESTER

On 09/14/01, PRESS REAL ESTATE SERVICES submitted an application for the approval of a preliminary plan of subdivision of property in the R-90 zone. The application proposed to create 1 lot on .4784 acres of land. The application was designated Preliminary Plan 1-02023. On 05/22/03, Preliminary Plan 1-02023 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 1-02023 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02023.

Approval, Subject to the Following Conditions:

- 1) Record plat to reflect Category I forest conservation easement as shown on the approved tree save and grading plan dated, April 21, 2003
- 2) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan
- 3) Compliance with the conditions of approval of the MCDPS stormwater management approval
- 4) Prior to issuance of building permits, applicant to submit an engineered sediment and erosion control plan to MCDPS for review and approval
- 5) Access and improvements, as required, to be approved by MCDPW&T per letter dated January 11, 2002, unless otherwise amended
- 6) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- 7) Other necessary easements

**ATTACHMENT FOUR**

Stuart Rochester  
Columbia Road Citizens Assn.  
2901 Greencastle Road  
Burtonsville, MD 20866

Mr. Ed O'Hara  
Cloverly/Fairland/White Oak CAC  
12510 Prosperity Drive, #150  
Silver Spring, MD 20904

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8601 Manchester Road  
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White Oak Area Civic Coalition  
301 Willington Drive  
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Bernard Fridovich  
White Oak Area Civic Coalition  
444 Sara Drive  
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Cloverly/Fairland/White Oak CAC  
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Silver Spring, MD 20902

Press Real Estate Services  
Larry Press  
9905 Hall Road  
Potomac, MD 20845

Fowler Associates, Inc.  
Gary Fowler  
255 N. Washington St  
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Rockville, MD 20850