



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

**APPROVED
MINUTES**

The Montgomery County Planning Board met in regular session on Thursday, January 12, 2012, at 9:11 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 6:35 p.m.

Present were Chair Françoise M. Carrier, Vice Chair Marye Wells-Harley, and Commissioners Casey Anderson, Norman Dreyfuss, and Amy Presley.

Prior to taking up the morning agenda, the Board participated in the presentation of Employee Service Awards. Items 1-5, 8C, and 12, taken up in that order, are reported on the attached agenda.

The Board recessed at 12:31 p.m. for lunch, to take up Items 13, 14, 7, and 6 in Closed Session, and to receive training related to the historic preservation program.

In compliance with §10-509(c)(2), State Government Article, Annotated Code of Maryland, the following is a report of the Board's Closed Session:

The Board convened in Closed Session at 1:00 p.m. in the third floor conference room, on motion of Commissioner Presley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion. The meeting was closed under authority of Annotated Code of Maryland, State Government Article, §10-508(a)(3), to consider the acquisition of real property for a Commission purpose and matters directly related thereto; §10-508(a)(7), to consult with counsel to obtain legal advice; §10-508(a)(8), to consult with staff, consultants, or other individuals about pending or potential litigation; and §10-508(a)(13), to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.

Also present for all or part of the Closed Session were Associate General Counsels David Lieb, Carol Rubin, and Christina Sorrento, and Eric Daniel of the Legal Department; and Ellyn Dye of the Commissioners' Office.

In Closed Session, the Chair briefed the Board on discussions with the County Council related to possible relocation of Commission offices to Wheaton; consulted with Legal Counsel on an issue related to a recent Board approval of a preliminary plan; received a briefing and provided guidance to staff with regard to a proposed settlement in the Dufresne case; and approved submitted Closed Session minutes.

The Closed Session was recessed at 1:35 p.m. for the Board to receive training on the County historic preservation program.

The Board reconvened in Closed Session to continue the cited Closed Session items at 3:15 p.m., on motion of Commissioner Presley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion.

The Closed Session adjourned at 3:45 p.m.

The Board reconvened in the auditorium at 4:05 p.m.

Items 8A, 8B, and 9 through 11 are reported on the attached agenda.

There being no further business, the meeting was adjourned at 6:35 p.m. The next regular meeting of the Planning Board will be held Thursday, January 19, 2012, in the Montgomery Regional Office in Silver Spring, Maryland.

Ellyn Dye
Technical Writer

M. Clara Moise
Technical Writer

Montgomery County Planning Board Meeting
Thursday, January 12, 2012
8787 Georgia Avenue
Silver Spring, MD 20910-3760
301-495-4600

1. Consent Agenda

*A. Adoption of Resolutions

- 1. Kensington Nursing Preliminary Plan 120110040 – MCPB No. 11-135**
- 2. Bowie Mill Property Preliminary Plan 120110120 – MCPB No. 11-78**
- 3. Bowie Mill Property Site Plan No. 820110050 – MCPB No. 11-79**
- 4. Church of the Little Flower Amendment to Final Forest Conservation Plan No. MR2002202-MCPS-1 – MCPB No. 11-83**

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other: PRESLEY ABSTAINED

Action: Adopted the Board Resolutions listed above, as revised and distributed by staff.

*B. Record Plats

- 1. Subdivision Plat No. 220100670, Potomac Manors; RE-2 zone, 3 lots; located on the north side of Burbank Drive, 1,000 feet west of Falls Road (MD 189); Potomac Sub-region Master Plan. *Staff Recommendation: Approval***
- 2. Subdivision Plat No. 220110090, Burtonsville Industrial Park (Revision); I-3 zone, 1 parcel; located in the southeast quadrant of the intersection of Sandy Spring Road (MD 198) and Columbia Pike (US 29), Fairland Master Plan. *Staff Recommendation: Approval***
- 3. Subdivision Plat No. 220110590, Shirkey's Addition to Fairland Acres; R-200 zone, 2 lots; located on the north side of Old Briggs Chaney Road, 400 feet west of Old Columbia Pike; Fairland Master Plan. *Staff Recommendation: Approval***

[4. Subdivision Plat No. 220111120, Poplar Run](#); R-200 zone, 3 parcels; located on the south side of Poplar Run Drive, 300 feet west of Early Light Lane; Kensington – Wheaton Master Plan. *Staff Recommendation: Approval*

[5. Subdivision Plat No. 220111210, West Chevy Chase Heights](#); R-60 zone, 1 lot; located on the north side of Chase Avenue, 350 feet east of Tilbury Street; Bethesda-Chevy Chase Master Plan. *Staff Recommendation: Approval*

[6. Subdivision Plat No. 220111280, Willerburn Acres](#); R-90 zone, 2 lots; located on the east side of Gainsborough Road, 500 feet east of Whistler Court; Potomac Sub-region Master Plan. *Staff Recommendation: Approval*
[7. Subdivision Plat No. 220120160, Burning Tree Valley, Section 2](#); R-90 zone, 2 lots; located on the west side of Beech Tree Road, 200 feet south of Burning Tree Road; Bethesda-Chevy Chase Master Plan. *Staff Recommendation: Approval*

[8. Subdivision Plat No. 220120330, Chevy Chase, Section 5](#); R-60 zone, 1 lot; located on the east side of Brookville Road (MD 186), 250 feet north of Thornapple Street; Bethesda – Chevy Chase Master Plan. *Staff Recommendation: Approval*

[9. Subdivision Plat No. 220120500, Harry M. Martin Tract](#); R-200 zone, 1 lot; located on south side of Woodwell Road, 150 feet east of Alderton Road, Aspen Hill Master Plan. *Staff Recommendation: Approval*

BOARD ACTION

Motion: ANDERSON/PRESLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved the Record Plats as stated above.

*C. Other Consent Items

Holy Cross Hospital Site Plan 820110110 – CORRECTED MCPB No. 11-99 [Correction of typographical error(s)]

BOARD ACTION

Motion: WELLS-HARLEY/DREYFUSS

Vote:

Yea: 5-0

Nay:

Other:

Action:Approved Corrected Board Resolution MCPB No. 11-99.

*D. Approval of Minutes

Minutes of November 17, 2011

BOARD ACTION

Motion: WELLS-HARLEY/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other: PRESLEY ABSTAINED

Action:Approved the minutes of November 17, 2011, as presented.

2. [Zoning Code Rewrite Presentation](#)

Staff will provide an update on the code drafting phase of the project. Staff will brief the Board on the second module, as well as report on sessions with the Zoning Advisory Panel and other internal stakeholder groups.

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action:Received briefing and discussed.

Planning Department staff presented the draft of Module 2 of the Zoning Code Rewrite project, including the commercial/residential, employment, and industrial zones, as well as additional sections of the Zoning Ordinance that were not taken up in Module 1.

There followed considerable discussion about the employment and industrial zones, particularly the Employment Life Sciences (ELS) Zone; the implications of the proposed revisions on the individual properties and the relative merits of implementing revisions of this

scope through the Zoning Code Rewrite and/or through the master plan process; and the calculation of densities.

3. [Board of Appeals No. S-786-B McDonald's USA, LLC](#)

Applicant requests a special exception modification for an existing drive-in restaurant, C-1 zone, 2207 Bel Pre Road, Silver Spring

Staff Recommendation: Approval with Conditions

(Action Required for Hearing by the Hearing Examiner on January 23, 2012)

BOARD ACTION

Motion: DREYFUSS/PRESLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved the revised staff recommendation, further revised to delete condition 3, as stated in the attached Letter of Transmittal.

Planning Department staff presented the request for a modification to a special exception for an existing drive-in restaurant, as detailed in the staff report. The proposed revisions include demolishing the existing building and play area, constructing a new building within the existing footprint, reconfiguring the drive-through lane, and establishing a new one-way drive aisle. The proposal will add 349 square feet of total gross floor area to the restaurant, although the patron area will be reduced by 715 square feet and 21 seats. A proposed trash enclosure that will expand the existing boundaries of the special exception use has triggered the review of the modification. Staff distributed revisions to the staff report and a new condition 8 related to the required waiver of 16 on-site parking spaces.

Mr. Chris Ruhlen, attorney representing the applicant, concurred in the staff recommendation, as revised, requesting that the Board delete condition 3, which requires a handicap ramp on the south side of the building. Mr. Ruhlen discussed the significant change of grade across the property, noting that the engineers do not believe it is possible to construct the ramp at that location. He noted that the plan exceeds the requirements of the American Disabilities Act, and he pointed out the location of two ramps and the handicap parking spaces.

In discussion, staff concurred in deleting that requirement.

*4. [Preliminary/Final Water Quality Plan No. S-2816: T-Mobile at Gibson Property](#)

115-foot tall unipole, wireless telecommunications facility and equipment compound, located on Parcel P161 at 2815 Cabin Creek Drive, RE-1 Zone, Fairland Master Plan and the Upper Paint Branch Special Protection Area (SPA)

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: ANDERSON/DREYFUSS

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved the staff recommendation to approve, subject to conditions, as stated in the attached Board Resolution.

Planning Department staff presented the water quality plan associated with a special exception petition for a telecommunications tower in the Upper Paint Branch Special Protection Area, as detailed in the staff report.

Ms. Tracy Anderson, attorney representing the applicant, concurred in the staff recommendation.

5. [Fee Structures](#)

Discussion of new fee structure being proposed for project plans and plans submitted concurrently with project plans.

Staff Recommendation: Approval of New Fees

BOARD ACTION

Motion: ANDERSON/PRESLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved the staff recommendation to implement the revised fee structure for project plans and concurrent plans as soon as possible, as stated in the attached Board Resolution.

Planning Department staff presented a proposed new review fee structure for project plans and other plans submitted concurrently with project plans, as detailed in the staff report. Staff noted that the new fee structure is consistent with the fee structure approved in 2010 for sketch plans. The structure provides a cap of \$260,000 and provides for limited reduction of the review fees for plans submitted for concurrent review with project plans to reflect the resulting reduction in review time.

Mr. Robbie Brewer and Mr. Steve Robbins, attorneys, offered comments in support of the proposed schedule of fees.

There followed some discussion of the timing of implementation and the steps required prior to implementation.

8. Roundtable Discussion

C. Streamlining Development Review

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefing and provided guidance to staff.

Planning Department staff briefed the Board on an inter-agency work group identifying changes to streamline and expedite the development process, while retaining important safeguards. Staff noted that one change that is being implemented by the Department is the coordination with County Department of Permitting Services (DPS) of the release of building permits, for which all other pre-permit conditions of approval have been met, prior to having the required forest conservation pre-construction meeting and stress-reduction measures implemented.

There followed some discussion of the need to continue to refine the process, the anticipated streamlining effect of the pending zoning code rewrite, and the need to provide effective communication to applicants regarding the impact of any changes.

*12. [Limited Amendment, Preliminary Plan 11991089A, Shrivastav Property, Lot 4](#)

R-200 zone; 0.46 acres; 1 existing lot containing a one-family residential dwelling; request to remove an existing forest conservation easement; located at 10705 Hunting Lane 900 feet west of the intersection with Darnestown Road in Rockville; Potomac Subregion Master Plan

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: PRESLEY/ANDERSON

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved the staff recommendation to approve, subject to conditions, as stated in the attached Board Resolution.

Planning Department staff presented the proposal to amend an approved preliminary plan and associated forest conservation plan to remove the existing Category I forest conservation easement, as detailed in the staff report. Proposed mitigation consists of 12,620 square feet of credit in an off-site forest conservation bank. Staff clarified that the subject proposal is not intended to correct a violation, and corrected that notation in the staff report. Staff said there was a violation, and the applicant has fully complied with the measures required to correct it.

Legal Counsel to the Board clarified that offsite planting is required at a ratio of 2:1, while retention of existing offsite forest is required at a ratio of 4:1.

13. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(13) to comply with specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See State citation and open session report in narrative minutes.

14. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(3) to consider the acquisition of real property for a Commission purpose and matters directly related thereto

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See State citation and open session report in narrative minutes.

7. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(8) to consult with legal counsel about pending litigation

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See State citation and open session report in narrative minutes.

6. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(7) to consult with legal counsel to obtain legal advice

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See State citation and open session report in narrative minutes.

8. Roundtable Discussion - CONTINUED

A. Parks Director's Report

[B. Purpose of the Bus Rapid Transit network and the criteria used to select its component corridors, the design year used for the Countywide Transit Corridors Functional Master Plan, and the link between this Plan and land use](#)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: A. Parks Director's Report - **Received briefing by Parks Department Director Mary Bradford, highlighting important activities in January and future events, as stated in the Director's Report distributed at the meeting.**

B. Purpose of the Bus Rapid Transit Network – **Planning Department staff noted that this meeting is a follow-up to the December 15 Planning Board meeting during which the Board**

expressed a need for additional information. Staff added that this is the first of two rounds of discussions scheduled in advance of worksessions in February on the proposed Bus Rapid Transit (BRT) network and methodology. Staff discussed the purpose of the BRT network, the design year to be considered, and the link between this Functional Plan and land use.

Messrs. Marc Elrich, Montgomery County Council member; Dan Wilhem representing the Montgomery County Civic Federation (MCCF); Jerry Garson, co-chair of the Seven Locks Civic Association; and Jonathan Genn of Tech Road, offered comments.

There followed extensive Board discussion with questions to staff and the speakers.

9. [Zoning Text Amendment-11-06](#)

To modify building heights in the Fenton Village Overlay zone and the adjacent CBD-0.5 zone

Staff Recommendation: Transmit Comments to County Council

(Action Required for County Council Public Hearing of 1/17/12)

BOARD ACTION

Motion: PRESLEY/ANDERSON

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendations to transmit comments to the County Council, as stated in the attached transmittal letter.

Planning Department staff presented the proposed zoning text amendment request to modify building heights in the Fenton Village Overlay zone and the adjacent Central Business District (CBD) 0.5 zone. Staff discussed the proposed 75 feet setback for buildings fronting both on Fenton and Wayne Avenues.

Ms. Karen Roper representing the East Silver Spring Citizens Association; and Mr. Duncan McIntosh, Pastor of the First Baptist Church of Silver Spring, offered testimony.

There followed a brief Board discussion with questions to staff and the speakers.

10. [Zoning Text Amendment 11-07](#)

To increase the allowable antenna height for telecommunications facilities; and generally amend the definition of telecommunications facility

Staff Recommendation: Transmit Comments to County Council
(Action Required for County Council Public Hearing of 1/17/12)

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendations to transmit comments to the County Council, as stated in the attached transmittal letter.

Planning Department staff presented the proposed zoning text amendment request to increase the maximum size of an antenna for a directional or panel antenna from six feet to eight feet in height, with the maximum width remaining at two feet. The maximum size of satellite or microwave dish antennas would increase from six feet to eight feet in diameter. The telecommunications service providers have indicated to the County that the increase in antenna size is needed to provide up-to-date service.

There followed a brief Board discussion with questions to staff.

*11. [Site Plan Amendment Review No. 82005003B, Westfield Montgomery Mall](#)

C2 zone, 60.02 acres, Amendment to modify conditions 2(b), 4(c), 6(g) and 10; located at the northeast quadrant of the intersection with Democracy Boulevard and Westlake Drive; Potomac Master Plan

Staff Recommendation: Approval of the Modification to the Conditions

BOARD ACTION

Motion: ANDERSON/PRESLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval of the Site Plan Amendment cited above, subject to revised conditions, as stated in the attached Board Resolution.

In keeping with the December 21 technical staff report, Planning Department staff discussed the request to amend the site plan for the Westfield Montgomery Mall regarding approval conditions 2(b), 4(c), 6(g), and 10. Staff noted that Conditions 2(b) and 4(c) deal with comprehensive signage, a way-finding program for the parking garages, and security lights in the parking structure adjacent to Westlake Drive. Staff noted that the security lighting plan shall be developed and included in the certified site plan. Staff also discussed proposed modifications to conditions 6(g) and 10 required for certification of the Certified Site Plan. Staff noted that a new condition 11 has been added which request that the applicant submits the certified site plan for review within three months of the mailing date of the resolution, and any future amendments will not be accepted by staff without the certified site plan.

Mr. Jim Agliaton and Ms. Elsie Reid representing Westfield, Inc. briefly discussed the proposed amendment and concurred with the staff recommendation.

Mr. Jerry Garson Co-chair of the Seven Locks Civic Association offered testimony.