



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 13, 2011, at 9:10 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 6:53 p.m.

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

Items 1 through 5 are reported on the attached agenda.

The Board recessed for lunch at 11:30 a.m. and to take up Item 13 in Closed Session.

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 12:10 p.m. in the third floor conference room, on motion of Commissioner Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion. The meeting was closed under authority of §10-508(a)(3), State Government Article, Annotated Code of Maryland, to consider the acquisition of real property for a Commission purpose and matters directly related thereto.

Also present for the Closed Session were Parks Department Deputy Directors Michael Riley and Gene Giddens; Mitra Pedoeem, Stephen Reid, Bill Gries, and April O'Neil of the Parks Department; Associate General Counsels Sean Dixon and Derrick Rogers of the Legal Department; and M. Clara Moise of the Commissioners' Office.

In Closed Session, the Board received briefing and discussed a proposed parkland acquisition as an addition to Rock Creek Regional Park.

The Closed Session was adjourned at 1:30 p.m. Vice Chair Wells-Harley left the meeting following the Closed Session.

The Board reconvened in the auditorium at 1:38 p.m.

Items 6 through 12 are reported on the attached agenda.

Commissioner Dreyfuss left the meeting at 6:30 p.m., during discussion of Item 12.

There being no further business, the meeting was adjourned at 6:53 p.m. The next regular meeting of the Planning Board will be held on Thursday, January 20, 2011, in the Montgomery Regional Office in Silver Spring, Maryland.

M. Clara Moise
Technical Writer

Ellyn Dye
Technical Writer

Montgomery County Planning Board Meeting
Thursday, January 13, 2011, 9:00 P.M.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

1. Consent Agenda

***A. Adoption of Resolutions**

1. Town of Somerset Bathhouse Forest Conservation Plan MR2010737 –ADOPTION OF MCPB RESOLUTION No. 10-169

2. Reserve at Fair Hill Site Plan No. 82005028C – ADOPTION OF MCPB RESOLUTION No. 10-175

3. Third District Police Station Forest Conservation Plan MR2009742 – ADOPTION OF MCPB RESOLUTION No. 10-176

BOARD ACTION

Motion: DREYFUSS/PRESLEY

Vote:

**Yea: 5-0 (Resolution #1)
4-0 (Resolutions #2 & 3)**

Nay:

Other: CARRIER ABSTAINED (Resolutions #2 & 3)

Action: Adopted the Resolutions cited above.

***B. Record Plats**

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: There were no Record Plats submitted for approval.

***C. Other Consent Items**

ADOPTION OF ORDER – regarding resolution of violations of Forest Conservation Plan 119900430 at 12310 Piney Meetinghouse Road

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved Adoption of Order/Resolution regarding the above-mentioned Forest Conservation Plan.

***D. Approval of Minutes**

Minutes of December 6, 2010

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Approved Minutes of December 6, 2010, as presented.

5. Department of Parks' Energy and Utility Conservation Plan

Energy and utility conservation cost savings to be presented by Dick Anderson, CQI Associates

Staff Recommendation: Transmit report

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation to transmit the Department of Parks and the Department of Planning Resource Conservation report to the Montgomery County government for inclusion in the annual combined agency resource conservation plans document prepared by the Interagency Committee on Energy and Utilities Management (ICEUM).

Parks Department staff and Mr. Richard Anderson, President of consulting firm CQI Associates, offered a detailed multi-media presentation regarding the Departments of Parks and the Department of Planning Resource Conservation Plan, followed by Board discussion and questions to staff.

2. White Flint Staging and Implementation

Staff Recommendation: (1) Allow development to proceed until July 23, 2011; (2) Do not allocate staging capacity until prerequisites have been met; and 3) Find that prerequisites for opening Phase One have not been satisfied.

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefing followed by discussion and provided guidance to staff.

In accordance with the January 5 technical staff report, Planning Department staff presented highlights of the recommendations for action regarding the White Flint Sector Plan staging. Staff noted that the main recommendations are to: 1) find that prerequisites have been met that will allow additional development in White Flint to proceed, subject to existing regulatory requirements, including Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR), until July 23, 2011; 2) find that additional development applications may not proceed beyond July 23, 2011, unless or until the Planning Board later finds that a transportation approval and monitoring program has been created that satisfies the requirements set forth in the Sector Plan; and 3) find that prerequisites for opening Phase I have not been satisfied, and therefore staging capacity may not be allocated at this time.

The Board unanimously concurred with staff recommendation numbers two and three and instructed staff to come back to the Board the following week with revised language for recommendation number one, including comments made by Board members during the meeting.

3. Extension Request for Project Plan Review No. 920070030, 4900 Fairmont

CBD-2 zone; 0.59 acres; Requesting extension of an approved plan for a mixed-use development including up to 154,864 square feet of development, consisting of 118 multi-family dwelling units and 3,300 square feet of non-residential space; located at the southwest intersection of Norfolk Avenue and Fairmont Avenue; Bethesda CBD

Staff Recommendation: Approval of the Extension

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: **Approved staff recommendation for approval, as stated in the attached transmittal letter.**

Planning Department staff offered highlights of the validity period extension request for an approved project plan for a mixed-use development including 118 multi-family dwelling units and 3,300 square feet of non-residential space located on a 0.59-acre property on Thayer Avenue in Silver Spring.

Mr. Bob Dalrymple, attorney for the applicant, offered brief comments and concurred with the staff recommendation.

Following a brief discussion, the Board approved to grant up to 18 additional months from January 20, 2011, for the applicant to submit a site plan.

4. Extension Request for Project Plan Review No. 920070010, Studio Plaza

CBD-1 & CBD-2 zones; 5.11 acres; Requesting extension of an approved plan for a mixed-use development including up to 684,442 square feet of development, consisting of 603 multi-family dwelling units and 256,314 square feet of non-residential space; located on Thayer Avenue, approximately 171 feet east of the intersection with Georgia Avenue; Silver Spring CBD

Staff Recommendation: Approval of the Extension

BOARD ACTION

Motion: ALFANDRE/DREYFUSS

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval, as stated in the attached transmittal letter.

In keeping with the December 22, 2010, technical staff report, Planning Department staff offered a multi-media presentation of the request to extend the validity period for an approved project plan for Studio Plaza, a mixed-use development project consisting of 603 multi-family dwelling units and 256,314 square feet of non-residential space on a 5.11-acre property on Thayer Avenue in the Silver Spring Commercial Business District. Staff noted that the validity review period was already extended twice and staff recommends another extension of eighteen months instead of thirty months as requested by the applicant. Staff added that there is a pending appeal of an approved abandoned alley, and the applicant is waiting for the Court of Special Appeals' decision before proceeding with the project.

Mr. Bob Dalrymple, attorney representing the applicant, discussed the proposed extension request and noted that the applicant is requesting a 36-month extension of the validity period rather than the 30-month previously requested based on the Court of Special Appeals' date of appearance.

Following a brief Board discussion with questions to staff and the applicant's representative, Board members voted to grant an extension of the validity period from October 14, 2011, until 24 months from the date of final un-appealable abandonment of the private alleys within Montgomery County Silver Spring Parking Lot 3, provided a complete site plan application is submitted within 18 months from the date of that abandonment.

13. 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 (NOTE: Rock Creek Regional Park)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

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

6. Board of Appeals No. S.E. 11-02: Margaret L. Zhang

Applicant requests a special exception for a child day care facility for 30 children; R-200 zone; located at 14315 Marian Drive, Rockville

Staff Recommendation: Approval with Conditions

(Action Required for Hearing by the Hearing Examiner on 01/21/11)

BOARD ACTION

Motion: PRESLEY/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other: WELLS-HARLEY ABSENT

Action: Approved the staff recommendation to approve, subject to conditions, as stated in the attached Letter of Transmittal.

Planning Department staff presented the request for a special exception for a child daycare facility for 30 children, as detailed in the staff report. Staff noted that this will expand an existing daycare facility for 12 children, which is permitted by right.

Ms. Margaret Zhang, the applicant, offered comments and responded to questions from the Board.

In discussion, staff provided information about traffic issues raised in correspondence, and the Board agreed to recommend that the Hearing Examiner consider adding a specific phasing schedule for the staggered drop-offs and pick-ups.

7. Preliminary Plan 120100150, Clewerwall - Resubdivision

RE-2 zone; 5.2 acres; 2 lots requested for 2 one-family detached residential dwellings, one existing to remain; located in the southwest quadrant of the intersection of Saunders Court and Saunders Lane; Potomac Subregion Master Plan.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: DREYFUSS/ALFANDRE

Vote:

Yea: 4-0

Nay:

Other: WELLS-HARLEY ABSENT

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

Planning Department staff presented the proposed resubdivision to combine two parts of lots to create two residential lots, with the existing house to be retained, as detailed in the staff report. Staff noted that the property is heavily forested and traversed by a tributary of Rock Run. In order to provide a usable yard for the existing house, the applicant proposes to exclude from the required Category I conservation easement 35 feet from the back and side of the house, for a total encroachment into the stream buffer of 5,840 square feet. Proposed mitigation of the encroachment will place 11,725 square feet of forested land adjacent to the delineated buffer into the conservation easement, which represents mitigation at slightly greater than a 2:1 ratio. Staff reviewed the guidelines for allowing encroachments, recommending that the Board approve the proposal. Concluding, staff revised condition 7 at the applicant's request.

Mr. Larry Gordon, attorney, and Mr. Charles Grimsley, representing the applicant, offered comments.

8. Burtonsville Commercial Crossroads Neighborhood Study

A. Briefing: Recent Development in Burtonsville

B. Briefing: Department of Housing and Community Affairs - Façade and Streetscape Project

C. Scope of Work: Burtonsville Commercial Crossroads Neighborhood Plan

Staff Recommendation: Approve the Scope of Work

BOARD ACTION

Motion: ALFANDRE/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other: WELLS-HARLEY ABSENT

Action: Received briefings and approved the proposed scope of work.

Planning Department staff briefed the Board on recent development in Burtonsville and discussed the proposed scope of work for the Burtonsville Commercial Crossroads Neighborhood Plan, highlighting issues to be addressed, such as planning options for the Burtonsville Crossing Shopping Center, a possible loop road, and design and access of properties along MD 198.

Ms. Cathy Mahmud and Ms. Roylene Roberts, representing County Department of Housing and Community Affairs (DHCA), provided information about County projects in the Burtonsville commercial areas, funded by the Capital Improvements Program, for façade and street enhancements to improve connectivity, pedestrian safety, and character. Mr. Rick Nelson, DHCA Director, also added comments.

9. CR Zones Zoning Text Amendment

Zoning text amendment to add CR Neighborhood and CR Town zones to the family of CR zones in Division 59-C-15. Modifications, clarifications, and corrections to integrate the new zones into the structure of the CR zones are proposed including changes to uses, parking, development methods, general requirements, development standards, and public benefit requirements.

Staff Recommendation: Transmit Zoning Text Amendment Language to Council

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received presentation, discussed, and deferred action, pending additional worksessions.

Continuing the discussion from January 6 of proposed revisions to the CR Zones, including the addition of the CR-Neighborhood (CR-N) and CR-Town (CR-T) zoning categories, staff presented the proposed final revisions, based on Board discussion and submitted comments.

Ms. Meredith Wellington (former Planning Board member); Mr. William Kominers, attorney; Ms. Patricia Harris, attorney; Mr. Robert Wulff, representing B. F. Saul; Mr. Neel Teague, representing Stout and Teague; Mr. Devin Doolin, attorney representing the Westfield Corporation; Mr. Barrie Howard, representing the New Hampshire Gardens Citizen's Association; City Councilmember Frederick Schultz, representing the City of Takoma Park; Ms. Lorraine Pearsall, representing

MCPB, 1-13-11, APPROVED

Montgomery Preservation, Inc.; Ms. Julie Davis of Chevy Chase; Ms. Lydia Sullivan of Kensington; Mr. Barry Peoples of Kensington; Mr. Larry Gordon, attorney; and Mayor Peter Fosselman, representing the Town of Kensington, offered comments.

There followed considerable discussion of various aspects of the proposed revisions and the new zoning categories. The Board generally agreed that the Zoning Text Amendment is not ready to be introduced and discussed the impact that delaying action would have on the pending Takoma-Langley Sector Plan and Kensington Sector Plan.

10. Zoning Text Amendment 10-13

To allow the Hearing Examiner to decide adequate public facility issues and parking waivers when the Examiner is granted the authority to approve a special exception application.

Staff Recommendation: Transmit Comments to County Council

(Action Required for County Council Public Hearing of 1/18/11)

BOARD ACTION

Motion: DREYFUSS/ALFANDRE

Vote:

Yea: 4-0

Nay:

Other: WELLS-HARLEY ABSENT

Action: Approved the staff recommendation to transmit comments to the County Council, as stated in the attached Letter of Transmittal.

Planning Department staff presented the Zoning Text Amendment to provide the Hearing Examiner the authority to decide adequate public facility issues and parking waivers in approving special exception applications, to reflect the authority of the Board of Appeals on those issues, as detailed in the staff report.

Mr. William Kominers, attorney, offered comments on the Zoning Text Amendment and proposed a revision.

There followed some discussion, with Mr. Kominers and staff responding to questions from the Board.

11. Zoning Text Amendment 10-14

To conform the land uses allow in the RNC/TDR zone to the land uses allowed in the RNC zone

Staff Recommendation: Transmit Comments to County Council

(Action Required for County Council Public Hearing of 1/18/11)

BOARD ACTION

Motion: PRESLEY/ALFANDRE

Vote:

Yea: 4-0

Nay:

Other: WELLS-HARLEY ABSENT

Action: Approved the staff recommendation to transmit comments to the County Council, including the revision recommended in discussion, as stated in the attached Letter of Transmittal.

Planning Department staff presented the Zoning Text Amendment to add land uses to the RNC/TDR Zone to conform with the uses in the RNC Zone, as detailed in the staff report. Staff noted that this change reflects the intent of the Board in recommending the creation of the zone and the uses that were not included appear to have been omitted by mistake.

Legal Counsel to the Board recommended an additional revision, which was accepted by staff and the Board.

12. Zoning Text Amendment 10-15

To clarify that airstrips allowed in agricultural zones must be associated with farming operations; and provide an amortization period for certain approved airstrip special exceptions

Staff Recommendation: Transmit Comments to County Council

(Action Required for County Council Public Hearing of 1/18/11)

BOARD ACTION

Motion: PRESLEY/ALFANDRE

Vote:

Yea:

Nay:

Other: DREYFUSS, WELLS-HARLEY ABSENT

Action: Agreed to transmit comments to the County Council about the Board's concerns about retaining airstrips as special exception uses, with a recommendation that the County Attorney review the federal preemption issue prior to action on the Zoning Text Amendment. Further, agreed to recommend that the amortization language be deleted, if the Zoning Text Amendment is approved.

Planning Department staff presented the Zoning Text Amendment to clarify that airstrips allowed in agricultural zones must be associated with farming operations, as detailed in the staff report.

Staff supports the proposal as consistent with the preservation goals for the rural areas of the County, and staff recommends adding language to require that any such airstrip remain unpaved. In addition, staff recommends that the amortization language in the proposed footnote be deleted. That language would rescind any approved special exception for an airstrip in agricultural zones that is associated with a farm but not associated with farming operations. Typically, the staff and Board recommendation would be to allow any legally operating uses to continue as nonconforming uses.

Legal Counsel to the Board called attention to an issue raised in correspondence, that federal aviation law preempts local jurisdictional authority over the operation of aircraft. Counsel expressed the view that allowing an airstrip as a special exception use is problematic because any conditions imposed with the approval of the special exception, such as restrictions on hours of operation and noise, cannot be enforced. Counsel noted that zoning prohibitions against airstrips, or zoning standards that establish minimum acreage or setbacks for airstrips, may be enforceable and, therefore, the use would be better established as a permitted or non-permitted use. Counsel recommended that the Zoning Text Amendment be submitted to the County Attorney for review of the federal preemption issue.