



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 14, 2010, at 9:18 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 6:15 p.m.

Present were Chairman Royce Hanson, Vice Chair Marye Wells-Harley, and Commissioner Joe Alfandre. Commissioner Amy Presley joined the meeting at 10:30 a.m., following the Roundtable Discussion on the Clarksburg Town Center.

Items 1 through 4 are reported on the attached agenda.

The Board recessed at 1:36 p.m. for lunch reconvened in the auditorium at 2:46 p.m.

Items 5 through 10 are recorded on the attached agenda.

Item 10 was discussed before Item 9.

There being no further business, the meeting was adjourned at 6:15 p.m. The next regular meeting of the Planning Board will be held Thursday, January 21, 2010, 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 14, 2009, 9:00 A.M.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Consent Agenda

A. Adoption of Resolutions

1. Yazdi Property Preliminary Plan 120080310 - ADOPTION OF MCPB CORRECTED RESOLUTION No. 09-142
2. Townhouses at Small's Nursery Preliminary Plan 120070610 – ADOPTION OF MCPB RESOLUTION No. 09-155
3. Fairland Elementary School Addition Special Protection Area Water Quality Plan MR2009707-ADOPTION OF MCPB RESOLUTION No. 09-158
4. Century Technology Campus Preliminary Plan 12002095A – ADOPTION OF MCPB RESOLUTION No. 09-156
5. Century Technology Campus Site Plan 82003007A – ADOPTION OF MCPB RESOLUTION No. 09-157

BOARD ACTION

Motion: **WELLS-HARLEY/ALFANDRE**

Vote:

Yea: **3-0**

Nay:

Other: **PRESLEY ABSENT**

Action: **Adopted the Board Resolutions as stated above.**

B. Records Plats

1. Subdivision Plat No. 220062070, Kemp Mill Farms

R-90 zone, 1 parcel; located in the northwest quadrant of the intersection of Kemp Mill Road and Grays Lane; Kemp Mill.

Staff Recommendation: Approval

2. Subdivision Plat No. 220091010, Wildwood Hills

R-200 zone, 1lot; located on the south side of Bells Mill Road, 250 feet east of Coventry Way; Potomac.

Staff Recommendation: Approval

3. Subdivision Plat No. 220100400, West Chevy Chase Heights

R-60 zone, 1 lot; located on the north side of West Virginia Avenue, 350 feet west of Maryland Avenue; Bethesda-Chevy Chase.

Staff Recommendation: Approval

BOARD ACTION

Motion: ALFANDRE/WELLS-HARLEY

Vote:

Yea: 3-0

Nay:

Other: PRESLEY ABSENT

Action: Approved the Record Plats as stated above.

C. Other Consent Items

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: There were no Other Consent Items submitted for approval.

D. Approval of Minutes

Minutes of December 3, 2009 meeting

BOARD ACTION

Motion: WELLS-HARLEY/ALFANDRE

Vote:

Yea: 3-0

Nay:

Other: PRESLEY ABSENT

Action: Approved the minutes of December 3, 2009, as presented.

2. Roundtable Discussion

A. Status Report of Clarksburg Town Center Site Plan No. 820070220.

B. Briefing on Executive Regulation 03-09, Agricultural Land Preservation Easement Purchases (BLTs)

C. Discussion of FCC Shot Clock and Implications of Cell Tower Applications.

BOARD ACTION

Motion: A. WELLS-HARLEY/ALFANDRE

Vote:

Yea: A. 3-0

Nay:

Other: A. PRESLEY ABSENT

Action: A. Approved the staff recommendation to assess a fine in the amount of \$22,000 for failure to fully comply with Condition 16 of the Board's Resolution approving the Clarksburg Town Center site plan, as stated in the attached Board Resolution.

A. Status Report on Clarksburg Town Center Site Plan No. 820070220—Received a status report by Development Review staff on the status of the Clarksburg Town Center development and required documents. Noting discrepancies in the initial Certified Site Plan submitted in October, and the 88-day period that lapsed before the corrected Certified Site Plan was submitted, staff recommended that the Board impose a fine of \$22,000. Mr. Steve Kaufman, attorney, and Mr. Doug Delano of Newland Communities, the applicant company, offered comments on behalf of the applicant, and Legal Counsel to the Board participated in the discussion.

B. Briefing on Executive Regulation 03-09, Agricultural Land Preservation Easement Purchases (BLTs)—Received a briefing by Community-Based Planning staff, and provided guidance to staff for comments to the County Council’s Planning, Housing, and Economic Development (PHED) Committee on the Executive Regulation, as stated in the attached Letter of Transmittal.

C. Discussion of FCC Shot Clock and Implications of Cell Tower Applications
Received a briefing by Development Review staff and Legal Counsel to the Board on the implications on staff review of time limits issued by the Federal Communications Commission (FCC) for completion of cell tower applications. In discussion, the Board provided guidance to staff in terms of working with other agencies in reviewing the cases and in presenting cases to the Board.

3. Preliminary Plan 120090230, Sandy Spring, Parcel B, Goddard School

OM zone and Sandy Spring/Ashton Rural Village Overlay; 4.71 acres; 1 lot requested for 72,121 square feet of office use, 12,238 square feet of daycare, and 1,718 square feet of retail use; located in the southwest quadrant of the intersection of Sandy Spring Road (MD 108) and Meeting House Road; Sandy Spring/Ashton.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: ALFANDRE/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: **Approved the staff recommendation to approve, subject to revised conditions, with further modification to condition 16 and a new condition requiring review of the architectural specifics at site plan, as stated in the attached Board Resolution.**

Development Review staff presented the proposal to consolidate three parcels of land to construct a three-story, 35,000 square-foot building, to include office space, retail space, and a daycare center, with a two-level parking structure, as detailed in the staff report. Staff discussed the approved rezoning of the property and development plan, which carried a considerable number of binding elements. Staff also reviewed and addressed concerns raised by the community, noting that many of the concerns relate to site plan issues that can be taken up at that time. Concluding, staff distributed and reviewed a revised list of conditions of approval.

Ms. Patricia Harris, attorney representing the applicant, concurred in the staff recommendation, including the revised conditions, and elaborated on the project, including the various approvals that have been granted. Ms. Harris recommended a modification to revised condition 16, which, following Board discussion with staff, the Board accepted.

Ms. Michelle Layton, representing the Sandy Spring Ashton Rural Preservation Consortium; Ms. Joy Turner of Sandy Spring; Ms. Kathy Virkus, representing Sandy Spring Village Homeowners Association; Mr. Barry Nix, representing the Sandy Spring Civic Agency; Ms. Jennifer Fajman of Ashton; Ms. Dawn Dolan of Ashton; and Mr. Alan Wright of Sandy Spring, offered comments on the proposal.

Ms. Harris offered rebuttal testimony, and she and Mr. Phil Perrine, the applicant's land planner, responded to questions from the Board and provided additional information as needed.

4. Pre-Preliminary Plan 720090140, Rolling Ridge Phase II

RDT zone; 25 acres; 1 3.8-acre lot requested for 1 one-family detached residential dwelling and a farm-remainder parcel; located on the Brink Road, 2000 feet west of Laytonsville Road (MD 108); Agricultural and Rural Open Space.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: ALFANDRE/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

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

Development Review staff presented the pre-preliminary plan proposing to create one lot and one farm-remainder parcel, as detailed in the staff report. Staff noted that the proposal was submitted as a pre-preliminary plan, rather than as a minor subdivision, because the plan proposes atypical frontage for the lot. Staff explained that the frontage requirement is satisfied by the dedicated, but not constructed, Laytonsville Bypass, which will connect Laytonsville Road and Brink Road. Until the Bypass is constructed, access will be achieved using existing easements via a private driveway through adjacent parcels.

Mr. Jody Kline, attorney, and Mr. Mike Bingley, representing the applicant, concurred in the staff recommendation and responded to questions from the Board about various access alternatives that were considered, but rejected.

Mr. Tom Linthicum, an adjacent property owner, offered comments.

There followed some discussion, with Development Review, Environmental Planning, and Community-Based Planning staff responding to questions and providing additional information as needed.

5. Board of Appeals No. S-2751: Victory Housing, Inc.

Board of Appeals No. S-2751: Victory Housing, Inc, applicant, requests a special exception for housing and related facilities for Senior Adults and persons with disabilities, R-60 Zone; 1600 St. Camillus Drive, Silver Spring

A. Preliminary Forest Conservation Plan No. S-2751: Victory Housing: Housing and related facilities for senior adults and persons with disabilities.

Staff recommendation: Approval with Conditions

B. Special Exception No. S-2751: Victory Housing: Housing and related facilities for senior adults and persons with disabilities.

Staff recommendation: Approval with Conditions

BOARD ACTION

Motion: **A. PRESLEY/WELLS-HARLEY**
 B. PRESLEY/WELLS-HARLEY

Vote:
 Yea: **A. 4-0**
 B. 4-0

Nay:

Other:

Action: **A. Approved the staff recommendation to approve the forest conservation plan, subject to conditions, as stated in the attached Board Resolution.**

B. Approved the staff recommendation to approve the special exception, subject to revised conditions, with additional modifications to conditions 5 and 6, as stated in the attached Letter of Transmittal.

Development Review staff and Environmental Planning staff presented, respectively, the special exception petition for housing and related facilities for senior adults and persons with disabilities and the associated forest conservation plan, as detailed in the two staff reports. Staff made several changes to the special exception staff report and proposed three additional conditions of approval.

Mr. Jody Kline, attorney representing the applicant, concurred in the staff recommendation, proposing a minor revision to new condition 6, to specify handicap parking spaces, and raising concerns about condition 5, which requires providing handicap access, in compliance with American Disability Act (ADA), between the facility and the adjacent church. Mr. Jim Brown of the applicant company discussed the difficulty of providing ADA access, because of changes in grade on the property. He also noted that the units are intended to be kept affordable, and the considerable expense of providing such access might increase the rental rates.

There followed considerable discussion of various alternatives for providing handicap access to the church, with Transportation Planning staff and Urban Design staff providing additional information.

Mr. Martin Klauber, the Montgomery County People’s Counsel, suggested that ADA issues will be addressed at building permit by the Department of Permitting Services.

6. Zoning Text Amendment No. 09-13

Zoning Text Amendment No. 09-13 to amend the TMX Zone section of the Zoning Ordinance to allow any approved development plan, supplementary plan, or site plan to construct subject to the applicable approval; to allow amendments to preliminary plans and site plans approved under any prior zone under certain circumstances and to generally amend the provisions related to regulatory approval before the application of a TMX zone.

Staff Recommendation: Transmit Comments to the County Council

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved the staff recommendation to approve the Zoning Text Amendment, with revisions, as stated in the attached Letter of Transmittal.

Development Review staff presented the Zoning Text Amendment to clarify the grandfathering provisions of the TMX Zone, as detailed in the staff report. Staff proposes one modification to the section allowing certain buildings to be enlarged by 10 percent or 7,500 square feet, to specify “whichever is less.” Staff also called the Board’s attention to a letter to the County Council, dated January 11, 2010, from attorney Robert Brewer on behalf of the Bellemead Development Corporation, which proposes additional language to allow reconstruction in the event of a casualty loss. Staff concurred in that modification.

7. Zoning Text Amendment No. 09-14

Zoning Text Amendment No. 09-14 to amend the Zoning Ordinance to amend the dissemination requirements for reports and recommendations from the Hearing Examiner.

Staff Recommendation: Transmit Comments to the County Council

BOARD ACTION

Motion: WELLS-HARLEY/PRESLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: **Approved the staff recommendation to approve the Zoning Text Amendment, as stated in the attached Letter of Transmittal.**

Development Review staff presented the Zoning Text Amendment to change the dissemination requirements for reports and recommendations from the Hearing Examiner to reduce reproduction and mailing costs, as detailed in the staff report.

In discussion, the Board recommended that staff investigate the desirability of making similar changes in terms of Planning Board materials.

8. Goshen Road from 650 feet south of Girard Street to 1,000 feet north of Warfield Road, CIP No. 509337

A. Forest Conservation Plan

Staff Recommendation: Approval with Conditions

B. Mandatory Referral No. MR2009805

Staff Recommendation: Approval with Comments to MCDOT

C. Planning Board Consent to Construct within Conservation Easement

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: **A. ALFANDRE/PRESLEY**
 B. ALFANDRE/WELLS-HARLEY
 C. WELLS-HARLEY/PRESLEY

Vote:
 Yea: **A. 4-0**
 B. 4-0
 C. 4-0

Nay:

Other:

Action: **A. Approved staff recommendation for approval, subject to conditions, as stated in the attached Board Resolution.**

B. Approved staff recommendation for approval and to transmit comments to the Montgomery County Department of Transportation, as stated in the attached transmittal letter.

C. Approved staff recommendation for approval of construction within the conservation easement, subject to conditions.

In accordance with the December 31 technical staff report, Transportation Planning and Environmental Planning Divisions staff offered a detailed multi-media presentation of the preliminary forest conservation plan for Goshen Road from the Gaithersburg city limits, north of

Warfield Road. Staff noted that the Montgomery County Department of Transportation is proposing to widen the existing undivided two-lane Goshen Road to four lanes.

At the Board's request, Mr. Michael Mitchell of the Montgomery County Department of Transportation offered comments.

There followed extensive Board discussion with questions to staff and Mr. Mitchell.

10. Mid-Cycle Review of School Capacity per the 2009-2011 Growth Policy

Revised School Test results reflecting the adoption of three CIP amendments increasing school capacity by the County Council on November 25, 2009

Staff Recommendation: Adopt the Mid-Cycle FY2010 School Test Effective 1/01/2010

BOARD ACTION

Motion: **ALFANDRE/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other:

Action: **Approved the adoption of the Mid-Cycle FY2010 School Test effective January 1, 2010.**

In keeping with the January 7 technical staff report, Research & Technology and Transportation Planning Divisions staff presented the mid-cycle review of school capacity for the Montgomery County 2009-11 Growth Policy. Staff discussed the mid-cycle assessment of the FY2010 school test results and noted that a decision by the Montgomery County Public Schools Board is based on these findings. Staff noted the Council staff recommended that Northwest School be included and that Clarksburg will come out of moratorium next year and will need a new middle school for which money is in the Superintendent budget.

There followed a brief Board discussion with questions to staff.

9. Enforcement Hearing - Site Plan No. 820020270 - The Highlands

R-200 zone; 1.36 acres; violation of the site plan related to relocation of a stairwell, landscaping, lighting, paving trellis and fencing; located at the northeast intersection of Stringtown Road and MD 355; Clarksburg

BOARD ACTION

Motion: **ALFANDRE/PRESLEY**

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved staff recommendation to require the applicant to complete the list of compliance items discussed at the meeting.

Legal staff to the Board noted that the list of nine violations distributed to Board members have been confirmed by multiple Planning Department staff visits to the site.

Development Review Division staff discussed the violations in detail, providing clarifications at the Board's request.

Staff recommended a timeline for completion of these items.

Following a brief discussion and questions to staff and the applicant, the Planning Board noted that the applicant should complete the compliance items by June 15, 2010, and submit an amendment request to the site plan by March 15, 2010. If the applicant does not comply, there will be a \$500 daily fine for each day after March 15 and June 15, 2010.

At the Board's request staff noted that based on actual costs staff calculated the amount of the proposed administrative penalty to be \$40,000, not including the compliance items. Staff also added that the Board may elect to reassess the penalty.