



**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, April 14, 2011, at 9:05 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 5:27 p.m.

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

Items 1 and 9, and Items 2 through 4, taken up in that order, are reported on the attached agenda.

The Board recessed at 12:00 p.m. for lunch and to take up Item 10 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 12:20 p.m. in the third floor conference room, on motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, 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)(7), State Government Article, Annotated Code of Maryland, to consult with counsel to obtain legal advice.

Also present for the Closed Session were Associate General Counsels David Lieb and Carol Rubin of the Legal Department; and Clara Moise of the Commissioners' Office.

In Closed Session, the Board received briefing by Legal staff on Enforcement Rules followed by discussion.

The Closed Session was adjourned at 1:35 p.m.

The Board reconvened in the auditorium at 2:04 p.m.

Items 5, 7, and 6, taken up in that order, are reported on the attached agenda. Item 8 was postponed.

The Board recessed at 4:11 p.m. to continue discussion of Item 10 in Closed Session in the Chair's office.

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 4:25 p.m. in the Chair's Office, on motion of Commissioner Presley, seconded by Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Presley present and voting in favor of the motion. Commissioner Dreyfuss joined the Closed Session shortly thereafter. The meeting was closed under authority of §10-508(a)(7), State Government Article, Annotated Code of Maryland, to consult with counsel to obtain legal advice.

Also present for all or part of the Closed Session were Associate General Counsels Carol Rubin and Christina Sorrento of the Legal Department; Mark Pfefferle of the Planning Department; and Ellyn Dye of the Commissioners' Office.

In Closed Session, the Board continued the discussion of the enforcement rules, proceedings, and Board options with legal counsel and staff.

The Closed Session was adjourned at 5:27 p.m. and the Board reconvened in open session.

There being no further business, the meeting was adjourned at 5:27 p.m. The next regular meeting of the Planning Board will be held Thursday, April 21, 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, April 14, 2011  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760  
301-495-4600**

**1. Consent Agenda**

**\*A. Adoption of Resolutions**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: There were no Resolutions submitted for adoption.**

**\*B. Record Plats**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: There were no Record Plats submitted for approval.**

**\*C. Other Consent Items**

**Request for Extension of Project Plan Amendment Review No. 92005002B, 8711 Georgia Avenue,**  
CBD-2 zone; 0.71 acres; Amendment to eliminate the office square footage and replace that space with  
160 residential units; keeping the retail space with minor modifications to the loading area; located at  
8711 Georgia Avenue, approximately 250 feet northeast of the intersection with Cameron Street; Silver  
Spring CBD

*Staff Recommendation: Approval of the Extension Request*

**BOARD ACTION**

**Motion: PRESLEY/WELLS-HARLEY**

**Vote:**

**Yea: 5-0**

**Nay:**

**Other:**

**Action: Approved staff recommendation for approval of the extension request for Project  
Plan Amendment Review, 8711 Georgia Avenue.**

**\*D. Approval of Minutes**

Minutes of February 24, 2011 and March 3, 2011

**BOARD ACTION**

**Motion: WELLS-HARLEY/PRESLEY**

**Vote:**

**Yea: 5-0**

**Nay:**

**Other:**

**Action: Approved Planning Board Minutes of February 24, and March 3, 2011, as  
presented.**

**9. Appoint Two Replacement Zoning Advisory Panel Members**

The Zoning Advisory Panel serves as the advisory board to the Zoning Code Rewrite project.

**BOARD ACTION**

**Motion: DREYFUSS/PRESLEY**

**Vote:**

**Yea: 5-0**

**Nay:**

**Other:**

**Action: Following a brief presentation by Planning Department staff, approved staff recommendation to appoint two replacement Zoning Advisory Panel members.**

**2. White Flint Staging & Implementation Guidelines**

*Staff Recommendation: Discuss proposed guidelines for implementing the White Flint Sector Plan's transportation approval mechanism*

(Note: public testimony will be accepted)

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: Received briefing and provided guidance to staff.**

Planning Department staff discussed the transportation approval mechanism as part of the proposed guidelines for implementing the White Flint Sector Plan. Staff noted that the Planning Board must establish a transportation approval and monitoring program within twelve months of the adoption of the sectional map amendment. The transportation approval mechanism that is supported by stakeholders requires amendments to the Subdivision Staging Policy (formerly the Growth Policy). The White Flint Implementation Guidelines are intended to serve as a replacement for the Local Area Transportation Review (LATR) and the Policy Area Mobility

Review (PAMR) guidelines for White Flint, and will serve a dual purpose as guidelines for implementing transportation Adequate Public Facilities (APF) in White Flint and as guidelines for implementing the Staging Plan.

Staff also discussed the staging allocation request process.

Messrs. Hadi Mansouri, Ehsan Matozedi, and Ms. Gail Louis representing the Department of Permitting Services (DPS) offered comments.

At the Board's request, Mr. Steve Robins, attorney, and Ms. Hilary Goldfard representing Promark Real Estate, offered comments.

There followed extensive Board discussion and questions to staff.

### 3. Forest Conservation Fees

Forest Conservation In-Lieu Fees and Administrative Civil Penalty Rate, and other Fees Associated with Forest Conservation Plans. County Resolution 15-1271 requires the Planning Board to revise the in-lieu fee and administrative civil penalty rate before May 1 of each odd numbered year.

*Staff Recommendation: Approval*

#### **BOARD ACTION**

**Motion:** DREYFUSS/PRESLEY

**Vote:**

**Yea:** 5-0

**Nay:**

**Other:**

**Action:** **Approved staff recommendation for approval of the revised recommended forest conservation application fees.**

In keeping with the April 6 technical staff report, Planning Department staff presented the request to increase the forest conservation fees and other fees associated with forest conservation plans as required by Montgomery County Council Resolution 15-1271. The Resolution indicates that this increase must be made by May 1 of each off numbered year and applicable on July 1. The in-lieu fee amount is currently \$1.00 per square foot and the maximum administrative civil penalty is currently \$9.55 per square foot. These rates became effective on July 1, 2009. For 2011, staff recommends an in-lieu amount of \$1.05 and a maximum administrative civil penalty of \$10.00 per square foot.

**\*4. [Preliminary Plan Review No. 120100290, Kensington Heights](#)**

RT-8 zone; 3.02 acres; 26 units including 25 townhouses and 1 one-family detached unit; located at the southwest quadrant of the intersection with West University Boulevard and the Wheaton Plaza access Road; Kensington-Wheaton

*Staff Recommendation: Approval with Conditions*

**BOARD ACTION**

**Motion: DREYFUSS/PRESLEY**

**Vote:**

**Yea: 5-0**

**Nay:**

**Other:**

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

In keeping with the April 1 technical staff report, Planning Department staff presented the request to create 26 lots for 25 townhouses and one single-family dwelling unit on a 3.02-acre property located at the intersection of University Boulevard and the Wheaton Plaza access road in the Kensington/Wheaton area. Staff noted that four of the proposed townhouses will be moderately priced dwelling units (MPDUs) and a forest conservation area is proposed for the southern portion of the site. Staff noted that the 1990 Wheaton Central Business District and Vicinity Sector Plan recommend low intensity residential for the subject property and the proposed request is in conformance with the Sector Plan. Staff also discussed proposed road improvements, existing transportation facilities, and the proposed forest conservation plan.

There followed a brief Board discussion with questions to staff.

**10. Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(7) to consult with counsel to obtain legal advice (TOPIC: Briefing on Enforcement Rules)

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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

**5. [Blockhouse Point Conservation Park](#)**

Authorization to acquire 5.0 acres, more or less, unimproved, located at 13501 Deakins Lane, Darnestown, Maryland 20874 from Nancy A. Becker and Joseph Greaney, Jr., as a Legacy Open Space, Natural Resource Protection Area.

*Staff Recommendation: Approval*

**BOARD ACTION**

**Motion:** WELLS-HARLEY/PRESLEY

**Vote:**

**Yea:** 5-0

**Nay:**

**Other:**

**Action:** Adopted the Resolution designating the property cited above as a Legacy Open Space Natural Resource Protection Area and authorizing acquisition of the property as an addition to Blockhouse Point Conservation Park for a purchase price of \$450,000.

**7. [Enforcement Hearing; Montgomery County Planning Department v. Michael & Linda Sandler](#)**

**BOARD ACTION**

**Motion:** DREYFUSS/WELLS-HARLEY

**Vote:**

**Yea:** 5-0

**Nay:**

**Other:**

**Action:** Concurred in the Hearing Officer's finding of violation. Agreed to allow the respondent a choice of one of the following two alternative corrective actions:



**1) To file a limited preliminary plan amendment to convert the Category I Conservation Easement to Category II, excluding the area of driveway encroachment, with offsite planting/mitigation required at a 2:1 ratio, and with stipulated penalties, offset by the amount for offsite planting, within 60 days of the mailing of the Board's Order. The plan amendment must be filed within 60 days of the mailing of the Board's Order and be presented to the Board within 120 days of mailing. The M-NCPPC preliminary plan and record plat fees will be waived.**

**2) To accept the Hearing Officer's recommended penalty and corrective actions, excluding the professional survey, with the penalty to be paid within 60 days of the mailing of the Board's Order and the onsite plantings to be accomplished between October 1 and November 15, 2011.**

**Further, agreed that if the conditions for alternative 1 are not met as set forth, alternative 2 will go into effect.**

Legal Department staff representing the Planning Department in the enforcement case against Michael and Linda Sandler of Silver Spring, the respondents, briefed the Board on the Hearing Officer's conclusions and recommendations, including a finding of violation of the Forest Conservation Law and the recommended administrative civil penalty and corrective actions, as stated in the Hearing Officer's decision. Legal staff called the Board's attention to the Sandlers' submitted written exceptions to the findings and recommendations and responded to issues raised, in keeping with the Legal Department's written response. Legal staff and Planning Department staff recommends that the Board approve the Hearing Officer's recommended order. Staff requests that the Board stipulate that the penalties be paid within 60 days of the mailing of the Board's Order; that the onsite plantings be done between October 1 and November 15, 2011; and that the other corrective actions be completed within 60 days of the mailing of the Board's Order.

Mr. Michael Sandler and Ms. Linda Sandler, the respondents, offered comments on their own behalf and participated in the Board discussion.

Legal Counsel to the Board discussed the Board's prerogatives at this point in the enforcement process, including options in terms of the penalties and corrective actions.

## **7. Enforcement Hearing; Montgomery County Planning Department v. Michael & Linda Sandler**

There followed considerable discussion of the issues of the case, including the location of the Conservation Easement, the Hearing Officer's recommended penalty and corrective actions, and other options. Planning Department staff responded to questions from the Board about the process, requirements, and costs for converting a Category I Conservation Easement to Category II, including the 2:1 offsite mitigation that would be required, and the differences between the two easement categories.

**6. Roundtable Discussion**

**Master Plan Assessment Status Report** - Review of proposed analysis methodology and prospective work products

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: Received briefing and discussed.**

Planning Department staff presented a review, status report, and demonstration of an ongoing project to move the Growth Policy master plan implementation tracking information and function from spreadsheets to an interactive GIS-based online mapping system. The mapping system will track the relationships among master plan recommendations, public infrastructure and capital improvements, and development approvals.

There followed considerable discussion of the online system and how it will improve analysis of growth and the public infrastructure to support it and assist in identifying where capital improvement resources should be directed.

**8. Budget Update – POSTPONED**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: This item was postponed.**