



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

**APPROVED  
MINUTES**

April 22 and 26, 2012

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 on Sunday, April 22, 2012:

The Montgomery County Planning Board convened in Closed Session, via teleconference, at 11:30 a.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 meeting was closed under authority of Annotated Code of Maryland, State Government Article, §10-508(a)(1), to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of Commission appointees, employees, or officials; or to discuss any other personnel matter that affects one or more specific employees.

There was no staff present for the Closed Session.

In Closed Session, the Board discussed a Planning Department personnel issue.

The Closed Session was adjourned at 12:10 p.m.

The Montgomery County Planning Board met in regular session on Thursday, April 26, 2012, at 9:05 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 7:50 p.m. In recognition of National Bring Your Child to Work Day, Jazmine Thompson, age 6, struck the gavel to bring the meeting to order. Chair Carrier welcomed the children to the day's activities, which will focus on this year's theme, Build Opportunities: 20 years of Education, Empowerment, and Experience.

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

Prior to taking up the morning agenda, the Planning Board participated with the members of the Prince George's County Planning Board in a Closed Session conference call meeting of The Maryland-National Capital Park and Planning Commission (M-NCPPC) in the third floor conference room at 9:50 a.m. and adjourned at 11:35 a.m.

The official citation and open session report of the Closed Session portion of the meeting, and the report of the open session action that followed, are contained in the M-NCPPC minutes of this date.

The Board reconvened in open session in the auditorium at 11:45 a.m.

Items 1, 2, 9, and 3 taken up in that order, are reported on the attached agenda.

The Board recessed for lunch at 2:00 p.m. and to take up Items 5, 12, and 14 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 2:20 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 Commissioner Presley present and voting in favor of the motion, and Commissioner Dreyfuss temporarily absent, and Commissioner Anderson absent. 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, and under authority of §10-508(a)(13), State Government Article, Annotated Code of Maryland, to comply with 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 Carol Rubin and Christina Sorrento; John Carter, Mark Pfefferle, Rose Krasnow, Robert Kronenberg, and Ron Cashion of the Planning Department; and Clara Moise of the Commissioners' office.

In Closed Session the Board received briefing from legal counsel and Planning Department staff regarding the enforcement policy process, and pending litigation between the County and Newland Development regarding the Clarksburg Town Center project. The Planning Board also approved Closed Session Minutes of March 2012.

The Closed Session was adjourned at 3:25 p.m.

The Board reconvened in the auditorium at 3:40 p.m.

Items 4, 6 through 8, and 10 are reported on the attached agenda. Item 11 was postponed.

The Board recessed at 6:40 p.m. 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 6:45 p.m. in the Chair's office, on motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion. Commissioner Anderson joined the Closed Session via telephone. The meeting was closed under authority of Annotated Code of Maryland, State Government Article, §10-508(a)(1), to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of Commission appointees, employees, or officials; or to discuss any other personnel matter that affects one or more specific employees.

There was no staff present for the Closed Session.

In Closed Session, the Board discussed a Planning Department personnel issue.

The Closed Session was adjourned at 7:50 p.m.

There being no further business, the meeting was adjourned at 7:50 p.m. The next regular meeting of the Planning Board will be held Thursday, May 3, 2012, in the Montgomery Regional Office in Silver Spring, Maryland.

M. Clara Moise  
Technical Writer

Ellyn Dye  
Technical Writer

**Montgomery County Planning Board Meeting**  
**Sunday, April 22, 2012**  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760  
301-495-4600

**1. Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(1) to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of Commission appointees, employees, or officials; or to discuss any other personnel matter that affects 1 or more specific employees

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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

**Montgomery County Planning Board Meeting**  
**Thursday, April 26, 2012**  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760  
301-495-4600

**Recognition of National Bring Your Child to Work Day**

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**MEETING OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING  
COMMISSION - VIA CONFERENCE CALL - THIRD FLOOR CONFERENCE ROOM**

**Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(9) to conduct collective bargaining negotiations or consider matters that relate to the negotiations

**M-NCPPC ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: See report of action in the Minutes of The Maryland-National Capital Park and Planning Commission.**

**PLANNING BOARD MEETING CONTINUES - MRO AUDITORIUM**

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**1. Consent Agenda**

**\*A. Adoption of Resolutions**

Respondent: Chris Pirtle – Forest Conservation Plan No. 119980960 – Order MCPB No. 12-50

**BOARD ACTION**

**Motion: DREYFUSS/WELLS-HARLEY**

**Vote:**

**Yea: 4-0**

**Nay:**

**Other: ANDERSON ABSENT**

**Action: Adopted Resolution cited above.**

**\*B. Record Plats**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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

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**\*C. Other Consent Items**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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

**\*D. Approval of Minutes**

Minutes of March 21 and March 22, 2012

**BOARD ACTION**

**Motion:**               **DREYFUSS/WELLS-HARLEY**

**Vote:**

**Yea:**               **3-0-1**

**Nay:**

**Other:**           **ANDERSON ABSENT**  
**PRESLEY ABSTAINED**

**Action:**       **Approved Planning Board Meeting Minutes of March 21 and March 22, 2012, as submitted.**

**\*2.     [Site Plan Review No. 820120080, Fenwick Station, CBD-1](#)**

2.84 acres, 310 multi-family dwelling units, including 12.5% MPDUs, located at the southwest quadrant of the intersection with Spring Street and Second Avenue, Silver Spring CBD  
*Staff Recommendation: Approval with Conditions and Adoption of Resolution*

**BOARD ACTION**

**Motion:** DREYFUSS/PRESLEY

**Vote:**

**Yea:** 4-0

**Nay:**

**Other:** ANDERSON ABSENT

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

Planning Department staff offered a multi-media presentation of the request to build 310 multi-family dwelling units, including 12.5 percent Moderately Priced Dwelling Units (MPDUs) on a 2.84-acre property located at the southwest quadrant of the intersection of Spring Street and Second Avenue in Silver Spring. Staff noted that the existing U.S. post office and parking lot located at 8616 2<sup>nd</sup> Avenue will be demolished and 76,432 square feet of residential development will be built on the site. The applicant will provide underground parking; an off-street bicycle path along 2<sup>nd</sup> Avenue which will provide an extension to the Silver Spring Green Trail; a public plaza at the corner of Spring Street and 2<sup>nd</sup> Avenue that will feature art and water features, a bike share station, and a pedestrian connection from the plaza to the Georgetown Branch Interim Trail which is the future Capital Crescent Trail (CCT); off-site improvements within the 3<sup>rd</sup> Avenue right-of-way to address existing flooding and maintenance issues. The improvements will also include a pedestrian path along the rear of the proposed building.

In reply to the Board, staff noted that the applicant will discuss the request to place the utilities underground.

Mr. Bob Harris, attorney representing the applicant, introduced Mr. Ed Novak, Ms. Sarah Davidson, and Ms. Allyson Taylor, members of the applicant's team, discussed the proposed request stating that installing utilities lines underground is very expensive but the applicant has proffered to do so wherever feasible.

Ms. Davidson discussed the project proposed amenities, and Mr. Ed Novak offered comments at the Board's request.

There followed a brief Board discussion with questions to staff and the applicant's representative.

**3. [Subdivision Staging Policy: Briefing on Schools Test Methodology](#)**

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**



**Nay:**

**Other:**

**Action: Received briefing followed by discussion.**

Planning Department staff provided an overview of the methodology used to administer the annual school test as required under the Adequate Public Facilities Ordinance as part of the Subdivision Staging Policy. Staff noted that the factors that affect Montgomery County Public Schools (MCPS) enrollment show them to be highly interrelated and, in some years, difficult to predict. The unexpected consequence of the recession was an unprecedented surge in enrollment that began in 2008. This sudden change in enrollment trend was particularly pronounced in elementary schools in the lower half of the County (Bethesda-Chevy Chase, Water Johnson, and Richard Montgomery clusters). All of these clusters serve established communities with little new housing construction. Adjusting to these rapid increases in enrollment will take several years as school capacity projects are planned and funds are requested through the Capital Improvements Program (CIP).

**9. [White Flint 2 Sector Plan Scope of Work](#)**

Staff Recommendation: Approval of the White Flint 2 Sector Plan Scope of Work

**BOARD ACTION**

**Motion: PRESLEY/DREYFUSS**

**Vote:**

**Yea: 4-0**

**Nay:**

**Other: ANDERSON ABSENT**

**Action: Approved staff recommendation for approval of the White Flint 2 Sector Plan Scope of Work report, as submitted.**

Planning Department staff briefly discussed the proposed White Flint 2 Sector Plan area which identifies the purpose and issues that will be addressed in the Plan; addresses the planning framework and context for the Plan; and describes the outreach activities for this planning effort.

Ms. Paula Bienenfeld, representing the North Bethesda neighborhood Homeowners Association; and Ms. Anne Mead representing Halpine Park, LLC, offered testimony.

At the Board's request, Parks Department staff clarified that Luxemanor Park is a local park adjacent to the Luxemanor Elementary school, and the park is used by the public after school hours.

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

**13. Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(1) to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of Commission appointees, employees, or officials; or to discuss any other personnel matter that affects 1 or more specific employees

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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

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**12. Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(7) to consult with 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.**

**14. Closed Session**

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(7) to consult with 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.**

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**5. 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.**

**\*4. [Preliminary Plan Amendment 12004082A: Clover Ridge Lots 6-8, and Outlot A \(in response to a violation\)](#)**

Removal of 2.5 acres of a Category I Conservation Easement on 85.09 acres, located at 28301 Clarksburg Road, RDT Zone, Agricultural and Rural open Space Master Plan

*Staff Recommendation: Denial*

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: By consensus, deferred action to allow additional negotiation of required mitigation for removal of 2.5 acres from the Category I Conservation Easement.**

Planning Department staff presented the request to remove property from a Category I Conservation Easement, as detailed in the staff report. Staff noted that there was a violation of the Easement, but the applicant is now in compliance and requests removal of 2.5 acres of non-contiguous property from the Easement for agricultural purposes. Staff reported that the Easement covers forest as well as stream valley buffer area and steep slopes. Staff recommends denial because no mitigation is offered, and Department policy requires 1:1 for onsite mitigation and 2:1 for offsite mitigation.

Legal Counsel to the Board noted on the record that an issue about this subdivision became evident during review of this request. The property was subdivided into three lots, but the property owner retained only two transferrable development rights (TDRs). Counsel noted that this issue is not before the Board for action or comment today.

Mr. Larry Gordon, attorney representing the applicants, provided information about the ownership of the property, noting that the previous owner died shortly before the plat was recorded. The current owners inherited the property, and there was some confusion about the boundary of the Easement. Mr. Gordon explained that the owners require the 2.5 unforested acres for grazing their sheep. In addition, they believe they have provided five acres of property within the Easement above the amount required. In their view, these five additional acres should satisfy the mitigation requirements.

Planning staff provided additional information about the original subdivision of the property, the placement of the Easement, and the requirements under the Forest Conservation Law.

Mr. Lonnie Luther, representing the Montgomery County Farm Bureau and himself, as owner of the abutting property, offered comments.

There followed considerable discussion of the forest conservation requirements and requirements related to protection of stream buffers and steep slopes. The Board generally supported allowing removal of the 2.5 acres from the easement, but noted that some mitigation is required, and they urged the staff and applicant to work toward a compromise solution.

**6. ICC Environmental Stewardship/Compensatory Mitigation Projects**

Approve the construction of Stormwater Management Pond retrofit and Storm Drain outfall project PB-33 and SPA BMP projects PB-140, PB-141, PB-142, PB-143 and PB-145, in the Upper Paint Branch SPA as part of the ICC Environmental Stewardship and Compensatory Mitigation Program.

*Staff Recommendation: Approval*

**BOARD ACTION**

**Motion: PRESLEY/WELLS-HARLEY**

**Vote:**

**Yea: 4-0**

**Nay:**

**Other: ANDERSON ABSENT**

**Action: Approved the mitigation projects as presented.**

Parks Department staff provided an overview of all the Intercounty Connector Environmental Stewardship and Compensatory Mitigation Program projects and noted that there are only a few projects remaining, the last of which is likely to be presented to the Board in July or September. Staff then presented the subject PB-33 project, including stormwater management pond retrofit and storm drain outfall; the four best management practice (BMP) biotrench projects, PB 140-143; and the PB-145 project to treat runoff from impervious areas of Good Hope Road, in the Upper Paint Branch Special Protection Area, as detailed in the staff report.

**7. Roundtable Discussion**

- A. Parks Director's Report
- B. Update: Clarksburg Town Center
- C. Format for Master Plan Worksession

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: Received briefings.**

**A. Parks Director's Report**—Parks Director Mary Bradford presented the Director’s report, highlighting recent and upcoming events and activities, in keeping with the distributed written report. Ms. Bradford noted the many activities related to Bring Your Child to Work Day; operating budget worksessions; unexpected cuts to the Parks Capital Improvements Program (CIP); Earth Day clean-up activities; awards; and other activities.

**B. Update: Clarksburg Town Center**—Mr. David Flanagan presented the required quarterly update on the Clarksburg Town Center, including outreach meetings, an agreement with the County to address the necessary funding and construction of the intersection of Clarksburg Square Road and MD 355, and an outline of the proposed collaborative process with the community to redesign the Clarksburg Town Center to create a financially viable plan that has the support of the community.

There followed some discussion of the responsibilities and obligations of Mr. Flanagan’s company under the site plan, as a result of the acquisition of a portion of the Clarksburg Town Center property. Chair Carrier questioned the lack of quarterly updates by Newland Communities, which are required under the site plan, and Legal Counsel to the Board suggested it would be helpful to ascertain and clarify which obligations under the site plan are now the responsibility of Mr. Flanagan’s company, and which obligations remain the responsibility of Newland Communities.

Mr. David Brown, attorney representing the Clarksburg Town Center Advisory Committee, offered comments related to the program of compliance ordered by the Board in remediation of the site plan violations and in lieu of significant fines.

Commissioner Amy Presley recused herself from participating in the Clarksburg Town Center Update item.

**C. Format for Master Plan Worksession**—This item was postponed.

**8. [Preliminary Plan No. 12001030F - Limited Amendment to Clarksburg Village](#)**

Amend the condition related to retail staging in conformance with the approved Clarksburg Master Plan Amendment and Development Plan Amendment (DPA 11-1), located in the southeast quadrant of the intersection of Little Seneca Parkway and Snowden Farm Parkway, 790.04 acres, R-200 and PD-4 Zone, Clarksburg Master Plan

*Staff Recommendation: Approval of Revised with Conditions and Adoption of Resolution*

**BOARD ACTION**

**Motion: DREYFUSS/WELLS-HARLEY**

**Vote:**

**Yea: 3-0**

**Nay:**

**Other: PRESLEY RECUSED; ANDERSON ABSENT**

**Action: Approved the staff recommendation to approve the limited amendment, subject to revised conditions, and adopt the revised Board Resolution, as attached.**

Planning Department staff presented a limited amendment to an approved preliminary plan to amend the condition related to the timing of retail development in the Clarksburg area to allow development of the retail/commercial uses to proceed without delay, contrary to the recommendations in the original Clarksburg Master Plan. Staff noted that the Master Plan was amended to change the staging of retail in Clarksburg, and the underlying Development Plan for this project was amended accordingly. Therefore, this limited amendment to the preliminary plan brings the plan into conformance with the amended Master Plan and Development Plan. In approving the amendment, staff requests adoption of the associated Board Resolution, including distributed minor editorial revisions.

**10. City of Gaithersburg Annexation (X-184), Sears/Great Indoors Property**

16331 & 16401 Shady Grove Road for 27.89 acres in the Shady Grove Sector Plan area.

*Staff Recommendation: Transmit Comments to City of Gaithersburg Mayor and Council and Montgomery County Council*

**(Action Required for Public Hearing by the City of Gaithersburg Mayor and Council on 5/21/12)**

**BOARD ACTION**

**Motion: PRESLEY/WELLS-HARLEY**

**Vote:**

**Yea: 4-0**

**Nay:**

**Other: ANDERSON ABSENT**

**Action: Approved the staff recommendation, with revisions, for transmittal to the City of Gaithersburg and County Council, as stated in the attached Letter of Transmittal.**

Planning Department staff presented an annexation petition to annex the Sears Great Indoors property on Shady Grove Road into the City of Gaithersburg and reclassify the property from the County's Research and Development (R&D) Zone to the City's Mixed Use Development (MXD) Zone, as detailed in the staff report. Staff reviewed the master plan recommendations for the site and the differences between the standards, requirements, and development potential in the R&D Zone and the City's MXD Zone, noting that the proposed new zone will allow substantially different uses and higher densities. State law prohibits development of substantially different uses or higher densities on a property within five years of annexation, unless expressly approved by the County Council, and staff recommends that the prohibition be asserted by the Council. Staff further recommends that residential development be prohibited on the property, due to its proximity to the Solid Waste Transfer Station.

Ms. Lynn Board and Ms. Trudy Walton Schwarz, City Attorney and City Planner, respectively, representing the City of Gaithersburg, elaborated on the proposal and noted that the City does not wish to place restrictions on future development of the property.

Ms. Erin Girard, attorney representing the applicant, provided additional information about the petition for annexation and future uses of the property.

There followed some discussion of potential future development, and the Board made some revisions to the staff recommendation on that issue for the letter of transmittal.

**11. Proposed Zoning Text Amendment - POSTPONED**

Establish definitions for attached and detached accessory apartment; establish standards for attached and detached accessory apartments as permitted uses and special exception uses; and revise the standards and requirements for a registered living unit

*Staff Recommendation: Transmit to County Council for Introduction*

**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

**Action: This Item was postponed.**

**13. Closed Session**

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**BOARD ACTION**

**Motion:**

**Vote:**

**Yea:**

**Nay:**

**Other:**

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