



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, November 5, 2009, at 9:30 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 4:45 p.m.

Present were Chairman Royce Hanson and Commissioners Joe Alfandre, Amy Presley, and Marye Wells-Harley.

Chairman Hanson opened the meeting with comments and a moment of silence to honor the contributions and the recent death of Commissioner Jean Cryor. Commissioners Alfandre, Presley, and Wells-Harley also offered comments concerning the late Commissioner Cryor.

Items 1, 3, 4, 2, 13, 14, and 5 through 9 are reported on the attached agenda.

The Board recessed at 11:40 a.m. for lunch and to meet with the Prince George's County Planning Board via teleconference, as The Maryland-National Capital Park and Planning Commission, in Closed Session. That Closed Session is reported in the minutes of The Maryland-National Capital Park and Planning Commission.

The Board reconvened in the auditorium at 1:00 p.m. with three Commissioners present. Commissioner Alfandre was necessarily absent for the afternoon session.

Items 10, 11, and 12 are reported on the attached agenda.

There being no further business, the meeting was adjourned at 4:45 p.m. The next regular meeting of the Planning Board will be held Thursday, November 12, 2009, in the Montgomery Regional Office in Silver Spring, Maryland.

Ellyn Dye
Technical Writer

M. Clara Moise
Technical Writer

Montgomery County Planning Board Meeting
Thursday, November 5, 2009, 9:00 A.M.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

1. Adoption of Resolutions

1. Shady Grove Metro Parcel P-146 - Site Plan No. 820090070 - ADOPTION OF MCPB RESOLUTION No. 09-135
2. Shady Grove Metro - P-146 - Preliminary Plan No. 120090100 - ADOPTION OF MCPB RESOLUTION No. 09-136
3. Tilden Woods Bio-Retention Facility - Forest Conservation Plan No. MR2007902 - ADOPTION OF MCPB RESOLUTION No. 09-137

BOARD ACTION

Motion: **PRESLEY/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other:

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

3. Consent Items

A. Extension Request for Project Plan Review No. 920100010, 8621 Georgia Avenue, CBD-2 zone; 0.69 acres; 191,281 square feet office; located on Georgia Avenue, approximately 75 feet west of Colesville Road (MD 29); Silver Spring CBD
Staff Recommendation: Approval of the Extension Request.

B. Site Plan Amendment Review No. 81985039A, Public Storage Briggs Chaney (formerly Briggs Chaney Industrial Park) and draft resolution, I-3 zone, 2.00 acres; Amendment to install a new cell tower in a fenced gravel compound with additional landscaping; located on Briggs Chaney Road, southwest of Aston Manor Drive; Fairland
Staff Recommendation: Approval of the Consent Amendment and Adoption of the Draft Resolution

BOARD ACTION

Motion: PRESLEY/ALFANDRE

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved the Consent Items as stated above.

4. Approval of Minutes

A. Minutes of October 5, 2009 meeting.

B. Minutes of October 8, 2009 meeting.

BOARD ACTION

Motion: ALFANDRE/PRESLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved the minutes of October 5 and 8, 2009, as presented.

2. Record Plats - MOVED

Subdivision Plat No. 220090010 – 220090040 and 220090080 – 220090120, Piedmont Crossing

R-90 zone; 62 lots, 18 parcels; located at the terminus of Amity Drive, approximately 350 feet west of Bounding Bend Court; Shady Grove Sector Plan.

Staff Recommendation: Approval

BOARD ACTION

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

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

Nay:

Other:

Action: **A. Agreed to remove the Record Plats from the Consent Agenda.**
 B. Approved the Record Plats for Piedmont Crossing, as stated above, removing the phrase "To be conveyed in fee to M-NCPPC" and Note 11 from the plat.

Chairman Hanson stated that there had been considerable correspondence concerning the subject record plats and a number of people wished to testify on this item. For these reasons, he entertained a motion to remove the plats from the Consent Agenda.

Chairman Hanson advised those present that the approval of the record plats is a ministerial matter and the only issue before the Board at this time is whether or not the record plats accurately reflect the approved preliminary plan of subdivision.

Attorney William Chen, former Mayor Mr. John Compton, Mayor Darrell Anderson, and Mr. Robert Booher, representing the Town of Washington Grove; and Mr. David Stopak and Ms. Shelly Winkler, adjoining property owners, offered testimony and participated in the discussion.

There followed considerable discussion about the history of the subject property, particularly in regard to a portion of the property abutting the Town of Washington Grove, which is designated in the Legacy Open Space Master Plan and intended to be deeded to M-NCPPC for preservation as a meadow. Legal Counsel to the Board and Development Review Division staff provided additional information and responded to questions from the Board as needed.

A VERBATIM TRANSCRIPT OF THIS ITEM IS ON FILE WITH THE MINUTES
IN SILVER SPRING, MARYLAND.

13. Reconsideration Request of 8204 Associates, LLC: Project Plan No. 920070010 Studio Plaza - ADDITION

Request to reconsider Planning Board Decision on Project Plan No. 920070010 Studio Plaza

BOARD ACTION

Motion:

Vote:
 Yea:

Nay:

Other:

Action: None taken.

There was no motion to reconsider.

14. Reconsideration Request of A. Kalivas and D. Kalivas: Project Plan No. 920070010 Studio Plaza

Request to reconsider Planning Board Decision on Project Plan No. 920070010 Studio Plaza

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: None taken.

There was no motion to reconsider.

5. Board of Appeals No. S-2752, Dr. Meredith Miklozek (Diamond Veterinary Hospital)

Dr. Meredith Miklozek (Diamond Veterinary Hospital), applicant, requests a special exception to operate a small Animal Veterinary Hospital, RE-2 Zone; 17000 Longdraft Road, Gaithersburg
Staff Recommendation: Approval

(Action required for hearing by the Hearing Examiner on 11/16/09)

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

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

Development Review staff presented the request for a special exception for an animal veterinary hospital, to continue and expand what has been a long-term veterinary clinic home occupation, as detailed in the staff report.

Mr. Gary Modjeska, representing the applicant, concurred in the staff recommendation.

6. Preliminary Plan 120090160, Weaver Property

Preliminary Plan 120090160, Weaver Property. RE-2 zone; 7.56 acres; 1 lot requested for 1 existing one-family detached residential dwelling; located on Esworthy Road, 2,350 feet east of Seneca Road; Potomac Subregion.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: **PRESLEY/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other:

Action: **Deferred action at the applicant's request.**

Development Review staff presented the preliminary plan to create one lot for an existing single-family dwelling, which will plat a parcel created by deed in the 1960's. Staff noted that the property has no frontage and achieves access through an easement across abutting property. Staff reported that there is an unresolved issue related to forest conservation. No forest is designated to be cleared on the property. Although there is forested area on the property, extending extensive forest on the abutting property, the forested area falls short of meeting the definition in the law for saved forest and, therefore must be counted as cleared. Therefore, afforestation at 2:1 or onsite planting at 1:1 is required. Staff reported that the applicant disagrees with this conclusion.

Mr. David McKee, the applicant's engineer, noted that the existing dwelling will be retained and requires extensive improvements. He discussed the various options under the staff recommendation, noting that it represents a very expensive technicality under the law, and he requested relief by the Board.

There followed extensive discussion of the technical issue and the possibility of a waiver. Staff noted that any waiver would have to be approved by other agencies.

The applicant requested that the Board defer action to allow staff and legal counsel to the Board to investigate the possibility and procedures for a waiver of the requirements.

7. Twinbrook Design Guidelines - POSTPONED

A. Staff Memo

B. Draft - Twinbrook Design Guidelines

Review of draft document and approval of hearing date for public comment.

(No Public Testimony Taken)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: This item was postponed.

8. Proposed Amendments: Montgomery County Comprehensive Water Supply and Sewerage Systems Plan- AD 2009-4 (Administrative Cases) & 2009-2 (Council Case)

Staff Recommendation: Transmit Recommendations to County Executive and County Council

BOARD ACTION

Motion:

A. PRESLEY/WELLS-HARLEY

B. ALFANDRE/PRESLEY

C. ALFANDRE/WELLS-HARLEY

Vote:

Yea: A. 4-0

B. 4-0

C. 4-0

Nay:

Other:

Action: A. Approved the staff recommendation to approve category S-1 under the abutting mains policy for request WSSCR 09A-GWC-04, Canaday Property.

B. Approved the staff recommendation for conditional approval of category S-3 for GWSMA 09G-FAI-03, Birmingham Road Neighborhood, if an alternative can be found that does not adversely affect the adjacent park property.

C. Approved the staff recommendation to deny category S-3 for WSCCR 09A-PAX-01, Eglise De Dieu Silver Spring/Beriuche, adding that if the County Council chooses to approve category S-3 under the Private Institutional Facility policy, any development should adhere as closely as possible to the ten percent impervious level recommended in the master plan and connection to the existing sewer infrastructure should be the least disruptive over the shortest distance possible, as stated in the attached Letter of Transmittal.

Environmental Planning staff presented two administrative water and sewer category change requests, for County Executive action, and one category change request, WSCCR 09A-PAX-01, Eglise De Dieu Silver Spring/Beriuche, for County Council request, as detailed in the staff report.

Mr. Alan Soukup, Department of Environmental Protection (DEP), participated in the discussion.

9. Zoning Text Amendment No. 09-10

Zoning Text Amendment No. 09-10 to allow hospitals as a permitted use in the I-3 zone under certain circumstances; and generally amend the provision related to land use in industrial zones.
Staff Recommendation: Transmit Comments to the County Council

(Action required for County Council public hearing of 11/10/09)

BOARD ACTION

Motion: WELLS-HARLEY/PRESLEY

Vote:

Yea: 3-0

Nay:

Other: ALFANDRE RECUSED

Action: Approved the staff recommendation to transmit comments recommending deferral of the Zoning Text Amendment, as stated in the attached Letter of Transmittal.

Development Review staff presented the Zoning Text Amendment to allow hospitals as a permitted use in the I-3 Zone, as detailed in the staff report. Staff noted that the text amendment was introduced at the request of the County Council's Planning, Housing, and Economic Development (PHED) Committee to help implement the Council's recommendations on the Germantown Sector Plan in relation to discussions about zoning and plans for the Montgomery College property. Staff recommends deferral of the Zoning Text Amendment at this time, on the basis that it is premature. The text amendment will be required if a determination is made that the I-3

Zone is most appropriate for the Montgomery College campus and a State of Maryland certificate of need for a hospital is issued for the site.

Mr. Robert Dalrymple, attorney representing Holy Cross Hospital, and Mr. Robert Harris, attorney representing Washington Adventist Hospital, offered comments.

15. Full Commission Closed Session - ADDITION

Pursuant to the Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(i) & (ii) (personnel matter) and Section 10-508(a)(7) (consult with counsel to obtain legal advice).

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Met in Closed Session with the Prince George's Planning Board via teleconference as The Maryland-National Capital Park and Planning Commission. The official citation and open session report are contained in the minutes of The Maryland-National Capital Park and Planning Commission.

10. Little Bennett Creek Stream Valley Park

Authorization to acquire 77.551 acres, more or less, unimproved from Luy Huynh, et.al., the majority of which is situated south of Kingstead Road, with a small portion situated north of Kingstead Road, west of Kings Valley Road, Damascus.

Staff Recommendation: Approval

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 3-0

Nay:

Other: ALFANDRE ABSENT

Action: Approved staff recommendation to authorize acquisition of a 77.551-acre property, more or less unimproved from Luy Huynh, et. Al., located south of Kingstead Road, west of Kings Valley Road in Damascus as an addition to the Little Bennett Creek Stream Valley Park.

11. FY11 Operating Budget Worksession - REVISED

- A. Planning
- B. Commissioner's Office
- C. CAS

(No Public Testimony will be taken)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received updates on FY11 Operating Budgets from Central Administrative Services (CAS) staff and from Planning Department Director and staff.

At the Board's request, Transportation Planning Division staff discussed the proposed transportation studies, some ongoing, which staff would like to see included in the FY11 budget request.

Planning staff noted that, as previously requested by the Planning Board, a month-to-month report on the Development Review Division's budget will be provided to the Board.

12. Roundtable Discussions - REVISED

1. State Highway Administration (SHA) Intersection Improvements on Rte. 198 (Spencerville Road) at Good Hope Road, Upper Paint Branch Special Protection Area
2. Forest Conservations Bonds
3. Impervious Bank for Upper Paint Branch and Upper Rock Creek SPA - **Staff Memo & Slide Presentation** – Park staff are looking for guidance from the Board on whether or not to establish a bank.
4. Corridor Cities Transitway (CCT)

BOARD ACTION

Motion: 2. PRESLEY/WELLS-HARLEY

Vote:

Yea: 2. 3-0

Nay:

Other: ALFANDRE ABSENT

Action: 2. Approved staff recommendation d) to provide funds to current property owners for planting on their properties. Use all unallocated funds after one year to supplement in-lieu fee and “Leaves for Neighborhoods” planting programs.

1. State Highway Administration (SHA) Intersection Improvements on Rte. 198

Environmental Planning and Transportation Planning Divisions staff offered a detailed multi-media presentation on the proposed State Highway Administration (SHA) project at the Intersection of Rte. 198 (Spencerville Road) and Good Hope Road. Staff noted that the improvements proposed by SHA will be located within the Upper Paint Branch Special Protection Area (SPA) and the SPA’s Environmental Overlay Zone (EOZ). However this project was not submitted as a Mandatory Referral project for review by the Planning Board as is usually the case. Although SHA may indicate that the environmental impacts of this particular project to the SPA are small, the cumulative impacts of many small projects can be considerable. Staff recommends that for the Rte. 198 project SHA should: a) Identify and permanently remove 0.113 acre of existing impervious surfaces in the Upper Paint Branch SPA; b) Coordinate early with M-NCPPC staff, the Department of Permitting Services (DPS), and the Department of Environmental Protection (DEP) so that local agencies can review and provide comments; and c) All such projects should also be reviewed by the Planning Board prior to final approval by state regulatory agencies.

Legal Counsel to the Board noted that SHA is required to meet the requirements for all such projects under State Law.

There followed extensive Board discussion and questions to staff.

2. Forest Conservation Bonds

Environmental Planning Division staff discussed the proposal to establish a policy on how to use the funds collected for non-performance of an approved forest conservation plan, since the forest conservation law and regulations are silent on how these funds should be used. Staff noted that four options are discussed in the October 30 technical staff report, i.e.: a) Retain the services of a contractor to plant on unplanted easements that are in default; b) Provide funds to current property owners for planting on their properties; c) Use all funds to supplement the in-lieu fee and “Leaves for Neighborhoods” planting program; and d) Use all unallocated funds after one year to supplement the in-lieu fee and “Leaves for Neighborhoods” planting programs.

Staff noted that regardless of which option the Board selects, the conservation easements should remain on the properties for the protection of existing and future forests and to provide water quality benefits.

There followed extensive Board discussion with questions to staff.

3. Impervious Bank for Upper Paint Branch and Upper Rock Creek SPA - Staff Memo & Slide Presentation – Park staff are looking for guidance from the Board on whether or not to establish a bank.

Parks and Planning Departments staff offered a detailed multi-media presentation regarding the possibility of Parks staff helping local government accomplish public projects in Special Protection Areas (SPA) Watersheds with an impervious cap. Staff discussed the various options that have been proposed and the idea of establishing a bank.

Chairman Hanson noted that he is not in favor of creating an impervious bank in the parks system, and added that the technology in impervious surfaces is changing rapidly both in and outside the parks system, and on-going dialogue between us and other government agencies should continue. Chairman Hanson added that the Montgomery County Public School system should consider building up to improve imperviousness and might be forced into that just by virtue of the stormwater management requirements.

At the Board's request, Mr. Craig Shuman Jr. representing Montgomery County Public Schools (MCPS) offered comments.

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

4. Corridor Cities Transitway

Transportation Planning Division staff offered a brief presentation regarding the Corridor Cities Transitway (CCT). Staff discussed the alignment options that are proposed for Gaithersburg Crown Farm and the Kentlands. Staff noted that the Metropolitan Transit Authority (MTA) will be completing their sensitivity test with the proposed land use alignments. Staff added that it is confident that MTA will come to the conclusion that bus rapid transit is the most cost-effective, as was stated by the Planning Board in the transmittal letter to the County Council in July 2009. Staff further added that the County Council will be discussing Corridor Cities Transitway during the Council's next Tuesday meeting.

There followed a brief Board discussion, with questions to staff.