

Briefing on the Art Review Panel Policies and Procedures

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Briefing on the Art Review Panel Policies and Procedures

Planning Staff seeks approval of the Art Review Panel Policies and Procedures document. This document primarily focuses on the Panel's process related to the installation of public art that is privately funded. In accordance with Section 4.7.2, the Art Review Panel reviews public artwork approved as a public benefit under the Optional Method of development and provides recommendations to the Planning Board.

This Staff Report introduces the updated Art Review Panel Policies and Procedures (originally approved in 1988). If adopted by the Montgomery County Planning Board, the updated Art Review Panel Policies and Procedures will supersede previous approvals.

Latest Revision Completed: December 2017

Summary

Public Art is one of several benefits that a developer may offer in exchange for increased density under the Optional Method of the development. Newly updated policies and procedures provide the basis for reviewing public art proposals and establish a formal structure that aligns with the current regulatory review process and the County's vision for public art.

The documents discussed in the context of this report have been reviewed by the Public Arts Trust Steering Committee (PATSC); which is a joint committee with representation from Montgomery County's Executive Branch, Montgomery County Public Schools (MCPS), Montgomery College, and the Maryland National Capital Park and Planning Commission (M-NCPPC).

BACKGROUND INFORMATION

The Montgomery County Zoning Ordinance (Division 4.7) gives Maryland - National Capital Park and Planning Commission (M-NCPPC) the legal authority to review and approve public benefits achieved through the Optional Method development. In accordance with the Optional Method of development, projects are permitted additional density (as compared to the Standard Method development) in exchange for public benefits. The Art Review Panel was formed to serve in an advisory role to M-NCPPC-MC staff and Planning Board regarding the appropriateness of the public art that may be proposed in fulfillment of the Optional Method requirements.

In the mid 1980's, the Planning Board convened a task force to study the placement, installation, maintenance, and approval of the public artworks. This task force submitted a report that outlined the general policies and procedures to be followed. These policies and procedures are being updated to reflect current standards, new requirements, and the County's vision for public art. Staff is recommending approval of the updated policies and procedures (originally approved February 1988), for the following reasons:

- A. The updated policies and procedures include new information on the panel's composition, the application process, panel recommendations, meeting procedures, review criteria, and implementation strategies. This information was not included in the original document.
- B. The update policies and procedures were created in conjunction with the County's vision. The County's Public Art Roadmap and Public Art Guidelines (adopted by the Public Arts Trust Steering Committee) has established new goals and objectives, based on the community's input and the evolution of public art throughout the nation. The County's vision for public art has evolved over time, and the updated policies and procedures seeks to strengthen our need to build a public art ecosystem.

ART REVIEW PANEL POLICIES AND PROCEDURES

Public art in private development plays an important role in helping to achieve the County's vision. The Montgomery County Planning Board approved policies and procedures, and established the Art Review Panel to serve in an advisory role to planning staff and the Board over 29-years ago. The updated Policies and Procedures (*see Appendix A*) reflect recent revisions to the Zoning Ordinance, the Optional Method of development, the Public Art Guidelines (originally adopted in 2013). The updated Policies and Procedures also reflects the development review process (*Diagram 1 below*). The Art Review Panel will conduct a review process that will be integrated into the current regulatory review time frames for Sketch Plans and Site Plans without extending the timelines set forth by the Zoning Ordinance and development application schedules.

The Panel's final recommendations are incorporated into the context of the Final Staff Report for a specific project and presented to the Planning Board in accordance with the standards and findings set forth in the County's Zoning Ordinance. Although the artworks approved through the Optional Method of development are public in nature, they are privately owned and maintained.

Step 1: Concept Discussions

The Developer introduces their concept(s) for the first time.

When: Prior to submitting a development application to the Planning Department.

Information Exchanged: The developer will identify potential locations/opportunities to incorporate public art in their proposal. The Public Art Coordinator will go over the County's public art goals, Steps 2 and 3, as well as significant deadlines relative to their submittal application.

Step 2: 1st Review – Development Application Filed

The Developer presents initial design concept(s) to the Art Review Panel.

When: During Sketch and/or Site Plan review, within 1-2 weeks after meeting with the Development Review Committee (DRC).

Submittal Requirements: The Applicant will complete an Art Review Panel application and submit supplemental information (as mentioned above) at least 2 weeks prior to the targeted Art Review Panel meeting date as discussed during the pre-application meeting (Step 1).

Step 3: 2nd Review – Final Recommendations

The Developer presents final design concept(s) to the Art Review Panel.

When: During Site Plan review, at least 5 weeks prior to Planning Board.

Submittal Requirements: A revised Art Review Panel application, Site Plan, artist information, a 3D Model (or equivalent), description of the required maintenance and final design concept will be submitted at least 2 weeks prior to the Art Review Panel meeting date.

Diagram 1: M-NCPPC Review Process for Private Development

After a thorough evaluation and review of the artworks, the Panel must provide the Planning Board with its professional recommendation and/or specify conditions of approval regarding the artworks or the fee-in-lieu option.

In addition to the incentive density guideline criteria, the Art Review Panel will evaluate how each proposal meets the following goals for achieving public art in private development of the highest quality.

- Integrates well into the site in terms of scale, material, and relationships to the neighborhood context.
- Demonstrates a clear vision or consistent theme between the artist and other designers early in the design process and development phasing.
- Provides public accessibility and invites participation for multiple uses, both special events and everyday activities.
- Engages multiple sense (e.g. sight, sound, smell, and touch).
- Supports the cultivation of new types of artworks by a diverse array of artists.
- Fosters an enriched community identity and a memorable design aesthetic, such that the artwork increases the public's understanding and enjoyment of a place to create a unique experience.
- Provides a thoughtful approach to the long-term maintenance and durability of permanent installations, revolving temporary works, and event programming.

Since these goals are consistent with the original document (see Appendix B), Staff recommends approval of the updated Art Review Panel Policies and Procedures document since it will provide a comprehensive approach and clear guidance to the Art Review Panel, Planning Staff, and other stakeholders.

CONCLUSION

Staff recommends approval of the Art Review Panel Policies and Procedures document, because it establishes a clear review process that is more aligned with the County's vision for public art. This document will supersede the previously approved document (see Appendix B).

APPENDIX

Appendix A: The Art Review Panel Policies and Procedures document

Appendix B: The Optional Method of Development Public Artworks Document (adopted February 1988)

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Appendix A: The Art Review Panel Policies and Procedures document

Montgomery County Art Review Panel

POLICIES AND PROCEDURES FOR THE OPTIONAL METHOD OF DEVELOPMENT

WORKING DRAFT DECEMBER 2017

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Introduction

Montgomery County receives new public art in one of two ways: 1) publicly funded public artworks are commissioned and installed on public property or 2) privately funded public artworks are commissioned by private developers through the optional method development process and installed on private property. The privately funded public artworks are approved by the Maryland National Capital Park and Planning Commission - Montgomery County (M-NCPPC-MC) Planning Board. These policies and procedures address the process for the Art Review Panel to review proposals for public art in private development and provide recommendations to the M-NCPPC-MC Planning Board.

Public art in private development plays an important role in helping to achieve the community's goals and priorities as outlined in the Arts and Humanities Council of Montgomery County's (AHCMC) 2016 strategic plan for public art, *Public Art Roadmap: Creating A Vibrant Public Art Ecosystem in Montgomery County*. Community feedback indicates that the most important goals for public art are to create memorable, meaningful people places throughout the County and support the local arts community¹. In addition, the study found that people prefer to see public art in more densely populated cores, where artworks can engage the public and enhance the experience of the streetscape.

BACKGROUND

The Optional Method was originally developed by the Montgomery County Planning Department in 1974 as a means of acquiring public facilities and amenities in the intensively developed central business districts of Bethesda, Silver Spring, Wheaton, and Friendship Heights. In February 1988, a committee was formed to study issues relating to the approval, installation, and maintenance of public artwork received through this development process. The Montgomery County Planning Board approved the policies and procedures, goals and objectives for selecting public artworks recommended by the study committee, and established the Art Review Panel. The Art Review Panel was formed to serve in an advisory role to M-NCPPC-MC staff and the Planning Board regarding the appropriateness of public art proposed in fulfillment of the Optional Method requirements.

This document updates the 1988 study committee's *Recommended Policies and Procedures for Artwork in the Optional Method of Development*. These guidelines reflect revisions to the Optional Method process in the Montgomery County Zoning Ordinance adopted in 2014 and outlined in the 2016 *Public Art Roadmap*.

¹ The Montgomery County Public Art Roadmap, pg. 15

PURPOSE

Private developers may provide public art, as one of many public benefits, in exchange for increased density through the county's Optional Method Zoning process. If the developer chooses to provide public art, the artwork may be provided on the subject property or the developer may pay into the Public Art Fund. Although the artworks approved through the Optional Method program are public in nature, they are privately-owned and maintained.

The purpose of the following policies and procedures is to establish a reasonable and consistent process for the Art Review Panel to consider public art proposals in private development, plan for long-term maintenance, and provide clear direction for the relocation or removal of privately-funded artworks.

APPLICABILITY

The Art Review Panel's policies and procedures apply to Optional Method applications for development on properties zoned Commercial Residential (CR), Commercial Residential Town (CRT), Employment Office (EOF), Life Sciences Center (LSC), or any other Optional Method projects that are seeking incentive density for providing public art as a public benefit.

PARTNERSHIPS

The Arts and Humanities Council for Montgomery County (AHCMC), Montgomery County's designated local arts agency, administers the Montgomery County Public Art Trust – the county's central program for managing and commissioning all public art on County-owned property. AHCMC works closely with the Montgomery County Planning Department to assist efforts in managing public artworks provided through private development.

The Public Arts Trust Steering Committee (PATSC) serves as an advisory body to AHCMC in managing the Public Arts Trust. AHCMC's Public Art Trust staff and representatives from the PATSC participate in the Art Review Panel, and a staff representative of the Montgomery County Planning Department also participates in the PATSC to ensure regular coordination and communication (reference Figure 1 below).

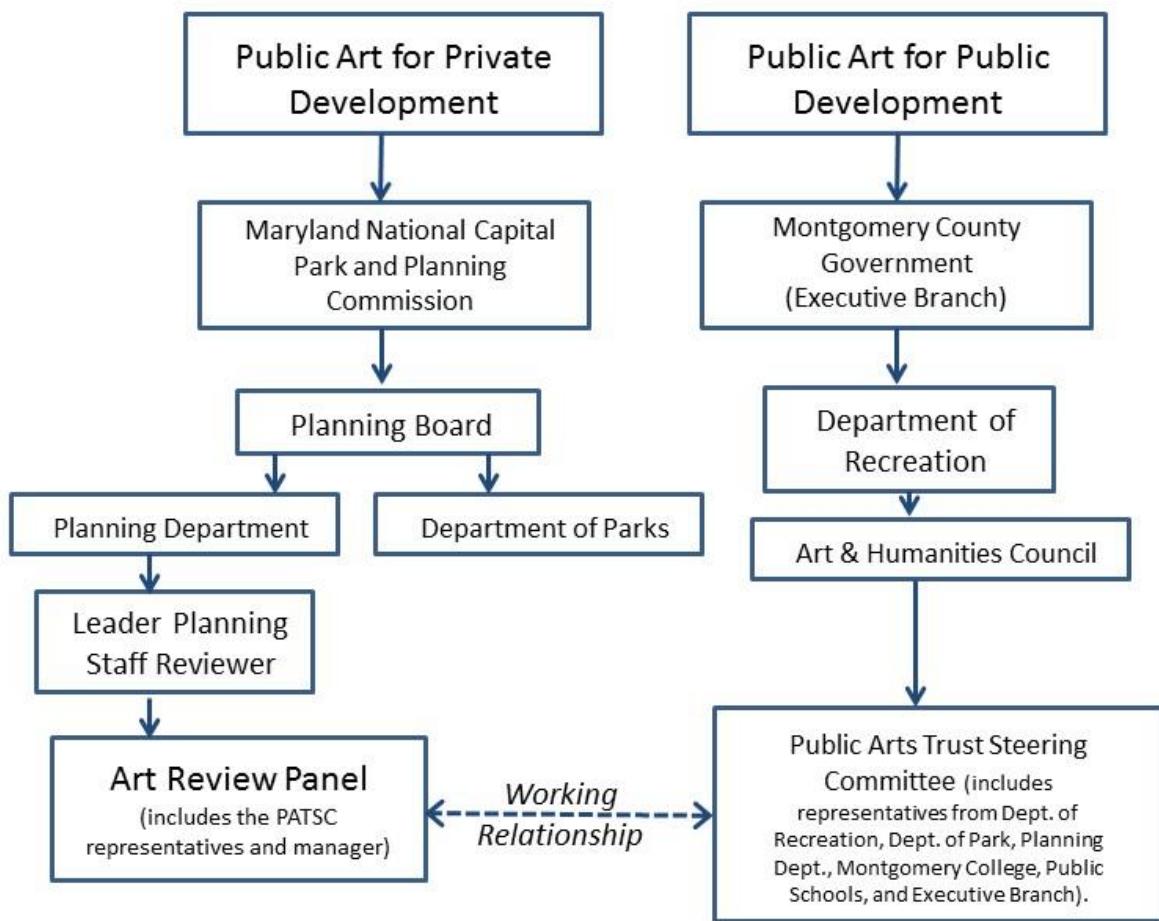


Figure 1 – Public Art Coordination & Partnerships Diagram

Rules of Procedure

PANEL COMPOSITION AND TERM

The Art Review Panel is comprised of no less than five voting members appointed by the Planning Board, and includes at least two PATSC representatives. Ex-officio members include the Public Arts Trust Manager and AHCMC CEO. The voting members are solicited through a public application process to submit background information. Potential M-NCPPC-MC Art Review Panel candidates are recommended by the standing Panel members to the M-NCPPC-MC Planning Board. Upon official acceptance of their role, each voting member will serve a three-year term that can be renewed upon approval by the Planning Board. AHCMC and PATSC representatives are considered non-voting members and their main function on the Panel is to 1) provide a direct connection and coordination of Public Art Fund, 2) share insight on how the County maintains its public artworks, 3) identify areas of potential collaboration or improvement, and 4) provide comments and recommendations to M-NCPPC Staff on review, relocation, and removal of Optional Method Projects in accordance with the CR Guidelines.

Representation of diverse interests on the Art Review Panel should be achieved by selecting members with, at a minimum, the following expertise:

- One business/development representative (including but not limited to a land use attorney or real estate developer).
- One community representative.
- Three arts professionals who are recognized and respected in their fields and may include: artists, architects, landscape architects, art critics, curators, and historians/ educators. At least one of the arts professionals must be a representative of the PATSC.

Panelists will be selected based on the following criteria: (a) knowledge of current best practices in public art, (b) willingness to fully participate in a review process, and (c) knowledge of or involvement with the resident community. It is expected that the Art Review Panel will act in a professional manner when providing comments to staff, the Developer, and/or the Planning Board. The Panel will be mindful of any conflicts of interest from associations with development teams, property owners, or associations. The Panelists will disclose any actual, apparent or potential conflicts of interest pertaining to any application or alleged violation that is subject to the jurisdiction of the M-NCPPC – MC Planning Board. If conflicts of interest arise, the specific panelist will recuse themselves of the discussion and recommendations.

A staff member from the Montgomery County Planning Department will serve as the Public Art Coordinator to support the work of the panel. The Coordinator's main function is to act in the best interest of the Planning Department and Planning Board. They will have significant expertise in the arts, design, and managing the regulatory review process. The Coordinator will also aid in communication between the Art

Review Panel and other related groups such as the Design Advisory Panel (DAP), PATSC, and the Arts and Entertainment Districts' boards.

APPLICATION PROCESS

The Art Review Panel review process is generally summarized in steps below (Illustrated in Figure 2, below) for public art projects proposed for optional method of development. All phases should be integrated into the current regulatory review time frame for Sketch Plans and Site Plans without extending the timelines set forth by the Zoning Ordinance and development application schedules. Reference the Public Art in Private Development – Review Chart in the Appendix of this document for more specific details related to a detailed review process.

STEP 1: Concept Discussions

Each new development proposal will be discussed with the respective Area team prior to submitting their optional method of development application to the Planning Department. The Public Art Coordinator will be invited to the concept meeting if the developer is planning to provide public art in exchange for public benefit points. During the concept meeting, the developer introduces their public art concept(s) for the first time. The Public Art Coordinator will discuss the County's public art goals and objectives with respect to their proposal, and summarize the typical review processes and timeline for the Art Review Panel. The Public Art in Private Development – Review Chart (in the Supplemental Appendix section of this document) outlines a more detailed comparison between the development review process and the public art review process.

STEP 2: 1st Review – Development Application

Once the development application is officially accepted by the Planning Department, a Development Review Committee (DRC) date is set. Within 1-2 weeks after meeting with the DRC, the developer will present their initial design concept(s) to the Art Review Panel. At the first meeting with the Art Review Panel, the developer does not need to have an artist selected or commissioned, but should come prepared to discuss the initial concept(s) and be receptive to hearing substantive comments from the Art Review Panel.

The developer will submit an online Art Review Panel application at least 2 weeks prior to the Art Review Panel meeting date. The online application should include, at a minimum, the following information in preparation of their first review meeting with the Art Review Panel.

- Contact information for each member of the development team
- A description of the initial concept including the goal of the public artwork, and how the design meets or exceeds the goals of the applicable Master Plan, Sector Plan, Public Art Roadmap and approved guidelines

- A site plan or diagram (an illustrative sketch showing where the buildings, roads, green space, SWM, etc. will be located)
- Identification of a public art consultant, if any
- Cross-sections, elevations and/or perspective views of the proposed location for the public art
- A proposed list of artists to be considered

STEP 3: 2nd Review – Final Recommendations

Once a Planning Board Hearing date is established, the developer will meet with the Art Review Panel to review the final design concept. This second review will occur at least 5 weeks prior to the Planning Board Public Hearing.

At least 2 weeks prior to the Art Review Panel meeting date the developer will submit, at a minimum, the following information in preparation for their second review meeting with the Art Review Panel.

- A revised Art Review Panel Application
- Any updates to the contact information of the development team
- Site Plan drawings (to scale)
- Identification of the Artist and the Artist's credentials
- 3D model of the proposed artwork (physical or digital representation)
- A description of the proposed artwork's materials and required maintenance
- A description of how the final design meets or exceeds the goals of the applicable Master Plan, Sector Plan, Public Art Roadmap and approved guidelines; and addresses the expectations of the Art Review Panel outlined during the first review meeting

The Art Review Panelists will vote at this meeting. The Art Review Panel's final recommendations and respective conditions of approval will be incorporated into the Final Staff Report (drafted by the Lead Reviewer) and presented to the M-NCPPC-MC Planning Board during the public hearing. The public will be notified and granted access to the revised drawings, and Final Staff Report 10-days before the public hearing. The Planning Board will also accept public testimony at the public hearing.

Step 1: Concept Discussions

The Developer introduces their concept(s) for the first time.

When: Prior to submitting a development application to the Planning Department.

Information Exchanged: The developer will identify potential locations/opportunities to incorporate public art in their proposal. The Public Art Coordinator will go over the County's public art goals, Steps 2 and 3, as well as significant deadlines relative to their submittal application.



Step 2: 1st Review - Development Application

The Developer presents initial design concept(s) to the Art Review Panel.

When: During Sketch and/or Site Plan review, within 1-2 weeks after meeting with the Development Review Committee (DRC).

Submittal Requirements: The Applicant will complete an Art Review Panel application and submit supplemental information (as mentioned above) at least 2 weeks prior to the targeted Art Review Panel meeting date as discussed during the pre-application meeting (Step 1).



Step 3: 2nd Review – Final Recommendations

The Developer presents the final proposal to the Art Review Panel.

When: During Site Plan review stage, at least 5 weeks prior to Planning Board.

Submittal Requirements: A revised Art Review Panel application, Site Plan, artist information, a 3D Model (or equivalent), description of the required maintenance and final design concept will be submitted at least 2 weeks prior to the Art Review Panel meeting date.

Figure 2 – Art Review Panel Application Process

PANEL RECOMMENDATIONS

After the first review meeting, the Art Review Panel will formalize its initial recommendations and comments into a memorandum. This memorandum will be referenced in the developer's revised Art Review Panel Application, as it provides guidance for the second review meeting. A minimum of 2 weeks is required for the Art Review Panel and Public Art Coordinator to finalize the initial recommendations and comments. Upon completion, the Public Art Coordinator will send the initial recommendations and comments to the Lead Reviewer and the developer. The initial comments will be attached to the Sketch Plan staff report and posted on the M-NCPPC-MC Planning Board agenda website for public review.

After the second review meeting, the primary goal for the Art Review Panel is to provide professional guidance to the M-NCPPC-MC Planning Board via final comments and recommendations incorporated into the Final Staff Report. The Panel will comment on the 1) strength and impact of the public art concept as it relates to the specific neighborhood and benefits received, 2) accessibility of the artwork, 3) scale of the artwork as it relates to the surrounding uses, and 4) challenges or issues that could potentially become problematic. This ensures that the M-NCPPC-MC Planning Board has all the necessary information to make a decision regarding the public benefits provided in exchange for increased density. A minimum of 2 weeks is required for the Art Review Panel and Public Art Coordinator to finalize the final recommendations and comments. Upon completion, the Public Art Coordinator will send the final recommendations and comments to the Lead Reviewer and the developer. The comments will be attached to the Site Plan staff report and posted on the M-NCPPC-MC Planning Board agenda website for public review.

The following standard conditions of approval should be incorporated into the M-NCPPC-MC Staff Report:

- The Certified Site Plan must contain site details that clearly indicate the overall dimensions, prescribed materials, necessary lighting fixtures, footers, and fasteners to ensure adequate safety and proper inspection of the artworks by M-NCPPC and Montgomery County Department of Permitting Services (DPS). The detailed information will come from engineered drawings, certified by a structural engineer.
- The developer and artist(s) will execute a maintenance agreement for the public artwork, and will present the signed document to the DPS and Montgomery County Planning Department prior to the issuance of the first building permit.
- The appropriate signage should be clearly visible, specifically identifying the title of the piece, artist name, materials, completion date, and overall dimensions.
- Prior to final inspection of the public artwork, the developer must submit to the Public Art Coordinator with the Montgomery County Planning Department at least three images of the artwork on-site and information regarding the 1) associated project number, 2) title of the piece, 3) date of completion, 4) description of materials used, 5) maintenance and conservation needs

and schedule 6) address, and 7) artist agreement. This information will be added to the existing inventories of the public artworks throughout the County maintained simultaneously by the M-NCPPC-MC Planning Department and AHCMC.

- The developer is required comply with the implementation section of the Art Review Panel Policies and Procedures.

The Art Review Panel's recommendations and proposed conditions are subject to modifications or rejection by the M-NCPPC-MC Planning Board in its review of the overall project in accordance with standards and findings set forth in the Zoning Ordinance.

MEETING PROCEDURES

The Art Review Panel will meet every two months subject to the acceptance of public art applications and the Panel's personal schedules. Meeting dates and times for the year will be updated on the Art Review Panel website (montgomeryplanning.org/development/public-art-in-montgomery-county). The Art Review Panel meeting dates are subject to change and are typically facilitated for the developer and their development team. Each Art Review Panel member is permitted to miss no more than two Art Review Panel meetings within a calendar year, and must also attend a mandatory retreat in August for Art Review Panel members. A minimum of three or more members of the Art Review Panel must be present for a quorum to proceed with project review. Additional members may participate via teleconference or conference call.

All meetings are held at the M-NCPPC-MC headquarters and are by invitation only. Meeting notes will be available to the public as an attachment to the Final Staff Report on the M-NCPPC-MC Planning Board agenda website. The M-NCPPC-MC Planning Department has access to presentation and teleconference technology, and developers may bring digital presentation materials on a flash drive or laptop computer to the Art Review Panel meetings. Prior to the Art Review Panel meeting, each project team will indicate to the M-NCPPC-MC Public Art Coordinator the necessary technology and the total number of team members that will be in attendance.

Art Review Criteria

INCENTIVE DENSITY IMPLEMENTATION GUIDELINES

The *Commercial/Residential and Employment Zone Incentive Density Implementation Guidelines* (last updated in 2015) provides criteria for the allocation of incentive density points for public art projects in private development, and the amount of in-lieu fee that should be paid to the Public Arts Fund as an alternative to providing public art. This document should be used as a guide for Art Review Panel discussions.

GOALS FOR PUBLIC ART

In addition to the incentive density guideline criteria, the Art Review Panel should evaluate how the proposals meet the following goals for achieving public art in private development of the highest quality.

- Integrates well into the site in terms of scale, material, and relationships to the neighborhood context
- Demonstrates a clear vision or consistent theme between the artist(s) and other designers early in the design process and development phasing
- Provides public accessibility and invites participation for multiple uses, both special events and everyday activities
- Engages multiple senses (e.g. sight, sound, smell, and touch)
- Supports the cultivation of new types of artworks by a diverse array of artists
- Fosters an enriched community identity and a memorable design aesthetic, such that the artwork increases the public's understanding and enjoyment of a place to create a unique experience
- Provides a thoughtful approach to the long-term maintenance and durability of permanent installations, revolving temporary works, and event programming

REVIEW CRITERIA

The Art Review Panel should apply consistent review criteria in its evaluations to provide developers and the community with a greater understanding of the Art Review Panel's expectations. The following criteria should be used by the Art Review Panel as guidelines assisting their evaluation:

- Public art should prioritize projects that 1) help create distinct gathering places around the county, 2) relate to environmental issues and stormwater management systems, and 3) promote experimentation with temporary projects 4) intersect with infrastructure projects and

opportunities 5.) incorporate social practice 6.) integrate science and technology into its design (as outlined in the *Public Art Roadmap*).

- The artwork will be located on site in a publicly accessible and visible location. Off-site locations can be considered if the location is related to the development such as adjacent sidewalks and adjoining parks and plazas; or located in a priority public space designated in the applicable master plan, sector plan, or design guidelines. Sites within private space such as office lobbies are not eligible for location of artwork as public amenity, due to the limitation of public access throughout the day.
- The artist and other design professionals will demonstrate how the artwork effectively interacts with the specific site and public users of the space, and respond to the urban design relationships of the surrounding area.
- The majority of artwork should be permanent in nature to be enjoyed on a continuous basis. Artwork will be located within the public realm and be accessible for at least 8 hours of the day. Interpretive information and/or programmed events are encouraged to increase public understanding and enjoyment of the art.
- Proposals for temporary artwork should demonstrate the safety and durability of the work, and should include a written timeline to rotate artwork. Each new temporary artwork proposal for the site should be submitted to the Art Review Panel for review to ensure consistency with the original Site Plan approval.
- Artwork should be a commissioned work for the specific site and should not be mass produced or standardized in its design.
- The artist should be required to submit a description of the artwork's maintenance at the time of Site Plan review to ensure the long-term durability of the artwork, and the selection of work that does not require excessive maintenance.
- The developer will consider any context or recommendations in applicable master plans, sector plans and approved design guidelines.
- The developer should consider any relevant recommendations or priorities in the *Public Art Road Map*.
- The developer should consider any priorities, goals, or recommendations of the Arts and Entertainment District in which the project is located.

In addition, public art projects that seek to promote the private nature of a development, by promoting commercial expression or creating a signature marking element, should not be construed as fulfilling any Optional Method requirements. Public artworks intended to meet the Optional Method requirements

should not include typography, fonts, logos, colors or any other indicators of the nature or purpose of a business that is located in the building or public area where the artwork is placed.

The following criteria apply to the approval of artist selection:

- An environmental design professional who is a member of the development team cannot be considered as an artist for the purposes of approving public art proposed to meet a requirement for the Optional Method of development.
- A person who is related to a member of the development team cannot be considered as an artist for the purposes of approving an Optional Method project.

IN-LIEU FEE ALTERNATIVE

A fee in-lieu of public art may be accepted for incentive density based on the criteria outlined in the *Commercial/Residential and Employment Zone Incentive Density Implementation Guidelines*. The fee is used for installation, management, and maintenance of public art at the discretion of the Public Art Trust Steering Committee, with preference given to the policy area where the development is located. Developers considering this alternative will do so based on the following reasons, or others deemed acceptable by the M-NCPPC-MC Planning Board:

- The development project is located in an inappropriate context for the public enjoyment of artwork
- The development project is located on a small or constrained site with extremely limited opportunities for the integration of public art or the public's ability to access the public art
- The site design and/or architectural design of the project is not conducive to the integration of public art
- The developer identifies an opportunity to establish a partnership with the PATSC and AHCMC to create public artworks (such as rotating temporary works).

Implementation

ARTIST CONTRACTS

The Visual Artist's Rights Act (VARA), effective June 1, 1991, offers the artist protection of his or her right of integrity and right of attribution. VARA rights must be dealt with carefully in the contract. Developers will enter into an agreement/contract with artist for the creation of the artwork. Contracts between the property owner and the artist will follow the model artist contract, sample templates are made available by the Americans for the Arts and the Public Art Network. The developer will also demonstrate that the contractual agreements between the artist and other design professionals ensures that the artist is aware of and involved in any required changes in site design which may affect the artwork.

MAINTENANCE

The owner of the property is responsible for the maintenance and/or conservation of the artwork in perpetuity of the development or until the public art is relocated in accordance with the prescribed maintenance plan. Neither Montgomery County or M-NCPPC will be responsible for the conservation and maintenance of public artworks in private development.

The property owner will record on the Site Plan for the subject property and the deed of the subject property the presence and nature of the public artwork that was conditioned with the approval of the development to ensure consistency should the property change ownership. All requirements for maintaining and managing the public artwork are binding on successors, assigns, and/or future owners of the property.

The artist will provide a maintenance agreement to the owner of the property for the appropriate preservation of the artwork including but not limited to: 1) a list of materials and products (including the projected life expectancy) used for the structure, footings, and all necessary attachments, 2) a routine cleaning and inspection (maintenance and conservation) schedule, and 3) drawings that identify all the stress points on the structure and footings.

The developer will incorporate the site details of the artwork from the artist into the scope of work/development program, and the associated Site Plan or construction documents. Certified copies of the Site Plan and the maintenance agreement will be given to both the M-NCPPC and the Public Arts Trust. The provision of these documents is a condition of approval for the development.

RELOCATION OR REMOVAL OF ARTWORK

The developer may choose to relocate the public artwork elsewhere on their site or remove the public artwork from the property. This modification should occur in the context of an amendment to the certified

Site Plan in which the public artwork was originally approved under the Optional Method of development. The developer should strongly consider replacing any public artwork that is removed with a new public artwork or public amenity that will be of equal or greater benefit as defined by the *Commercial/Residential and Employment Zone Incentive Density Implementation Guidelines*. If the developer elects not to replace the existing public art with new public art (a one to one exchange), adequate justification will be summarized in the project's description.

The following guidelines apply to the relocation or removal of public art in private development.

Criteria for Relocation or Removal

Public artworks shall be recommended for relocation or removal only in unusual circumstances and only if reasonable cause has been established by one or more of the following:

- the architectural support (building, wall, or plaza) will be destroyed in construction;
- the use of the public space may have changed, and/or the artwork may have lost the original contextual meaning;
- the artwork's present condition poses a safety hazard to the public;
- the artwork requires excessive conservation and/or maintenance, or has inherent faults of design or workmanship;
- the condition or security of the artwork cannot be reasonably guaranteed in its present location; or
- relocation has been requested by the artist.

Relocation and Removal Procedures

Proposals for relocating or removing of public art in Optional Method projects will be managed by the M-NCPPC-MC Public Art Coordinator. Decisions about the relocation or removal of public art in Optional Method projects will be made by the M-NCPPC-MC Planning Board, based on recommendations from the Art Review Panel, the PATSC, and the affected Arts and Entertainment District, if any.

Should the owner of a property where an Optional Method public art project is located wish to relocate or remove an artwork, the owner must complete a pre-application meeting with the Area Team and the Public Art Coordinator, apply for a Limited Site Plan amendment, and schedule a follow-up meeting with the Art Review Panel. The Limited Site Plan Amendment application will be reviewed by M-NCPPC Staff, while the modifications to the public artwork will be reviewed by the Art Review Panel. The developer's justification for removal or relocation will address how the property owner will mitigate for the loss of the artwork and the public's benefit that will still be provided on-site.

The request for a Site Plan Amendment must include: 1) justification based on the criteria under which the owner is proposing to relocate or remove the artwork, 2) a report of contact with the artist who created the artwork, 3) an appraisal demonstrating the value of the artwork, and 4) a plan for what will happen to the artwork. The request will also address how the public benefit that was originally provided by the artwork will be impacted, through either the relocation of the artwork or the provision of new artwork of equal or greater value to the development.

Following the same steps outlined in the Art Review Panel's review process (pages 5 to 7 of this document), the Panel will discuss the proposal for removal of the public artwork and make final recommendations to the M-NCPPC-MC Planning Board. The proposal will be referred to the Public Art Coordinator and the Art Review Panel, and the PATSC. Additional comments may also be provided by the relevant Arts and Entertainment district. The final memorandum will consolidate the comments (received by the Panel, the PATSC, and the respective Arts and Entertainment district) and provide a final recommendation to be incorporated into the Final Staff Report and presented to the M-NCPPC-MC Planning Board during the public hearing. Any modifications to the Site Plan (respective site details and conditions of approval) will be included in the certified plan and are enforceable by the Department of Permitting Services (DPS).

Mitigation

Should the property owner wish to remove any artwork, the following steps will be followed:

- The artwork shall be offered first to the artist and then to the Public Arts Trust.
- The developer will replace the public artwork with a new public benefit (preferably public art) that will have equal or greater benefit as a public amenity.
- Any financial costs incurred to implement removal, mitigation the loss, relocation, and/or disposal of public artwork will be funded by the property owner.

MONITORING

Public artworks in private development will be inspected by M-NCPPC-MC staff on an annual basis. The purpose of these inspections is to verify the proper installation of the artwork, to update the public art inventory website, and to assess any potential hazards or maintenance issues. The property owners will be notified of any violations to the certified Site Plan promptly. A sample inspection questionnaire is provided in the Supplemental Appendix of this document.

Definitions

For the purposes of this document, the following terms are defined:

Artist²: An individual who meets one or more of the following criteria:

- realizes income through the sale, performance, publication or commission of original works of art;
- has previously exhibited, presented, performed or published original works of art in museums, galleries or other recognized art venues and publications;
- has formal training or education in a field of art; and/or
- has received awards or other forms of recognition from arts juries, arts grant panels, and similar entities for his/her artistic abilities or accomplishments.

Art Review Panel: A panel appointed by the M-NCPPC-MC Planning Board that serves in an advisory role to M-NCPPC-MC Planning Board Planning Department staff and the Planning Board regarding the appropriateness of public art proposed in fulfillment of the Optional Method requirements.

Artwork: An original creation by an artist. May be one-of-a-kind or from a limited edition, functional or purely aesthetic, exterior or interior, integrated or stand-alone, temporary, semi-permanent, or permanent. Artworks do not include landscaping, fixtures or features such as grates, streetlights, benches, signs, architectural materials, or other design enhancements, unless designed by an artist as a unique feature for the project. (See also the Montgomery County Code, Sec. 8-43 for the definition of work of art)

Arts and Humanities Council of Montgomery County (AHCMC): The designated local arts agency representing the Department of Recreation as the Public Arts Trust administrative contractor. Provides day-to-day management and oversight of the Public Arts Trust.

County: Montgomery County, Maryland.

Design Advisory Panel: A panel created by the Bethesda Overlay Zone and appointed by the M-NCPPC-MC Planning Board that serves in an advisory role to Planning Department staff and the M-NCPPC-MC Planning Board regarding the architecture, urban design, and landscape architecture of development proposals.

² Environmental design professionals, such as architects or landscape architects, can be considered artists if they otherwise meet the criteria in this definition.

Developer: The entire development team including, but not limited to, the developer, artist, architect, landscape architect, and engineers applying for public benefits for the provision of public art in private development.

Lead Reviewer: Staff member of the Montgomery County Planning Department assigned to manage the regulatory review of a development application, including Sketch Plans and Site Plans.

Optional Method: The development process allowing additional incentive density in exchange for public benefits, such as public art, as outlined in the County Zoning Ordinance.

Public Art: An artwork that is located indoors or outdoors and is visually and/or physically accessible to the public at least eight hours per day. Typologies include site-specific, site-integrated, and site-sensitive works and can be temporary, semi-permanent, or permanent.

Public Art Coordinator: A staff member from the Montgomery County Planning Department that supports the work of the Art Review Panel.

Public Art Fund: Money used to support the long-term maintenance and conservation of public art that is publicly funded and managed by AHCMC.

Public Art Road Map: A strategic plan for public art throughout Montgomery County. This plan will assist the Trust and M-NCPPC-MC Planning Board in guiding privately and publicly funded public art projects.

Public Art in Private Development: Artworks approved through the Optional Method program that are public in nature, but are privately-owned and maintained.

Public Art in Public Projects: County-initiated public art projects on sites funded by County departments or agencies, including Montgomery County government, Montgomery County Public Schools, the Maryland-National Capital Park and Planning Commission, and Montgomery College.

Public Arts Trust: The Public Arts Trust is the County's public art program designed to receive, hold, and pay out public and private funds to buy, display, relocate, and conserve public artworks on County property.

Public Arts Trust Steering Committee (PATSC): A committee convened by the AHCMC that serves as an advisory board to the AHCMC chief executive officer and Director in implementing the Public Arts Trust public art program and includes representatives from the Department of Recreation, the Department of Parks, the Department of Transportation, the Department of General Services, the Department of Housing and Urban Development, Montgomery County Public Schools, Montgomery College and various communities from Montgomery County, MD .

Site Plan: A development proposal that provides a detailed overview of the applicant's development. Site plan review will be used to determine if the proposed development satisfies current laws and regulations, and substantially conforms with the recommendations of the applicable master plan and approved guidelines.

Sketch Plan: A development proposal that describes a project at an early stage to provide the public and the M-NCPPC-MC Planning Board the chance to review a proposed development for general design, density, circulation, public benefits, and relationship to the master plan before a Developer is required to expend significant resources on design and engineering.

Temporary Artwork: An artwork that is created to be presented for a fixed period of time, usually less than a year.

Appendix: Supplemental Information

Appendix A: Sample Application



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
MONTGOMERY COUNTY PLANNING DEPARTMENT

Art Review Panel Submission Form

Project Data

Date	
Project Number	Zone
Project Name	Master Plan

	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Applicant			
Artist			
Landscape Arch			
Architect			
Engineer			
Attorney			

Site Context & Data

Location	
Land Use Context	
Proposed Uses	
Proposed Density	
Public Use Space %	on-site/off-site
Other Public Amenities Proposed	

Please attach relevant vicinity maps, site/landscape plans, and illustratives or renderings as 11"x17" reductions or as pdf files.

Artwork Details

Location on Site	
Approx. Size/Dimensions	
Materials & Estimated Budget	
Concept Statement	

Please attach material samples, cut sheets, sketches, similar work/techniques, renderings, etc.

Appendix B: Sample Art Review Panel Meeting Notes



MONTGOMERY COUNTY PLANNING DEPARTMENT THE MARYLAND - NATIONAL CAPITAL PARK AND PLANNING COMMISSION

FROM: Molline Jackson,
Public Art Coordinator

PROJECT: **PROJECT NAME**
_____ PLAN No.

DATE: **DATE**

The (**PROJECT NAME**) project was reviewed by the Art Review Panel on (**DATE**). The following meeting minutes summarize the Applicant's presentation, the discussion during the meeting, and recommendations regarding the public art for the public benefits package. The Panel's final recommendations will be incorporated into the Staff Report and strongly considered by the Planning Board prior to the certification of the Site Plan and/or prior to the release of the first building permit. Should you have any additional questions and/or comments please feel to contact the Public Art Coordinator.

Attendance:

_____ (Lead Plan Reviewer)
_____ (Area _ Supervisor)
_____ (Applicant)
_____ (Artist)
_____ (Applicant's Architect)
_____ (Applicant's Landscape Architect)
_____ (Applicant's Engineer)

_____ (PATSC Manager)
Christopher Anderson (Panelist and PATSC Representative)
Claudia Rousseau (Panelist and PATSC Representative)
Damon Orobona (Panelist)
Germano Gomez (Panelist)
Judy Sutton Moore (Panelist)
Mark Kramer (Panelist)
Molline Jackson (Public Art Coordinator)
Ralph Bennett (Panelist)

Summary of the Applicant's Presentation:

- Description of the subject property and proposal
- Description of the public benefits received
- Description of the public artwork(s)

Discussion Points:

- Where is this project in terms of the review process?
- What was the Panel's initial reaction to the public artworks?)?
- What were the major items that were emphasized during this meeting?

Panel Recommendations:

The following recommendations should be incorporated into the Staff Report as conditions of approval.

(standard conditions)

1. The Certified Site Plan must contain site details that clearly indicate the overall dimensions, prescribed materials, necessary lighting fixtures, footers, and fasteners to ensure adequate safety and proper inspection of the artworks by the AHCMC and Montgomery County Department of Permitting Services (DPS). This information will come from engineered drawings, certified by a structural engineer.
2. The Developer and Artist(s) will execute a maintenance agreement for the public artwork, and will present the signed document to the DPS and Montgomery County Planning Department prior to the issuance of the first building permit.
3. The appropriate signage should be clearly visible, specifically identifying the title of the piece, artist name, materials, completion date, and overall dimensions.
4. Prior to final inspection of the public artwork, the Developer must submit to the Public Art Coordinator with the Montgomery County Planning Department at least three images of the artwork on-site and information regarding the 1) associated project number, 2) title of the piece, 3) date of completion, 4) description of materials used, and 5) address. This information will be added to the existing inventory of the public artworks throughout the County (mcatlas.org/art).
5. The Developer must comply with the implementation section of the Art Review Panel Policies and Procedures.

Appendix C: Sample Inspection Questionnaire

Inventory Number
Interior Exterior

Public Art Survey Questionnaire For Site Inspections on Private Property

Directions:

- Read the entire Public Art Survey Questionnaire carefully before beginning the Site Inspection.
- Review all available information identified by the certified plan number, public art inventory website and available images prior to visiting the site.
- Complete this questionnaire and save it to the respective public art database as a PDF file.
- For sculptures with several separate sculptural components, complete one *Survey Questionnaire* for each individual artwork. If necessary, complete relevant sections of the *Survey Questionnaire* for each component and staple them together.
- Contact the Montgomery County Planning Department if you have any questions about how to use this questionnaire.

Date of Inspection: _____ Name of Inspector: _____

Part 1: Basic Descriptive Information

Title Of The Work (If this is not provided, use title found on signage near site and note accordingly)

Primary Artist (last name, first name—use information provided or note accordingly)

Other Collaborators

- Carvers _____
 Designers _____
 Architects _____
 Other (designate role, e.g., landscape architect, engineer) _____
-

Execution Date (Use date inscribed on work if different from date provided. If approximate date, precede with circa, or c.) _____

Other Dates (check as many as apply)

- Cast _____ Installation _____ Dedication _____
-

Markings/Inscriptions (check as many as apply)

Is the artist's signature visible on the piece?

- Yes, I examined and found signature
 No, I examined artwork and frame/base but did not see signature
 Unable to determine, couldn't get close enough to check

If signature is visible, record here: _____

Does the work have foundry/fabricator marks?

- Yes, I examined and found foundry or fabricator's marks
- No, I examined artwork, frame, and or base and did not locate
- Unable to determine, couldn't get close enough to check

If foundry mark or fabricator marks is visible, record here: _____

Please record any inscriptions/ markings that appear on the sculpture, indicating location and style (e.g., Roman script, capital or lower case characters). Use slash between separate lines of inscription. (e.g. ALEXANDER CALDER/1967/New York City).

Record the text of any associated nearby identification or commemorative plaques.

Media (material(s) of Artwork. Circle all that apply. Bring a magnet to test for iron)

Artwork:	Bronze	Ceramic	Concrete	Fiberglass
	Metal	Mosaic	Plastic	Stone
Wood	Acrylic	Fiber	Mixed media	
	Pastel	Undetermined		
Other (specify) _____				

If known, name specific medium (e.g., bronze, stained glass, Cor-Ten steel, oak)

Frame/Base:	Bronze	Ceramic	Concrete	Fiberglass
	Metal	Mosaic	Plastic	Stone
Wood	Acrylic	Mixed media		Undetermined
	Other (specify) _____			

If known, name specific medium (e.g., bronze, stained glass, Cor-Ten steel, oak)

If 2-dimensional, is Artwork glazed? Yes No Note if plexi or glass. What is the condition of the protective glazing? _____

Was information regarding media obtained by direct observation? Yes No

Obtained from information provided? Yes No

Obtained from information found at site? Yes No

Approximate Dimensions (indicate unite of measure)

Always measure height from the tallest points and width from the widest points.

Artwork: Height _____ Width _____ Depth _____ Diam _____

Frame/Base: Height _____ Width _____ Depth _____ Diam _____

Description Of Artwork And Condition (These notes supplement images.)

Briefly describe the sculpture, its subject/theme and its overall condition. Use the following description key when appropriate: PR= proper right; PL= proper left. Use PR and PL for figurative works to indicate the direction or side from the perspective of the statue. (i.e. as if you were positioned on the base exactly as is the sculpture). For abstract works, describe the predominant forms, colors, shapes and textures. For descriptions of either abstract or figurative pieces avoid judgmental language. For condition, indicate any broken or missing parts and describe evidence of cracks, graffiti, etc. Look for rust and failing welds on metal pieces.

Information Part II: Location/Jurisdiction

Property Owner/Project manager (name of agency, institution, or individual that currently owns or administers the artwork and is responsible for its long-term care.)

Name _____
Department/Division _____ Street _____
Address _____
City _____ Zip code _____
Contact email _____ Contact phone number _____

If the Artwork has been moved, please list former location(s) or owner(s)

Environmental Setting

(The general vicinity and immediate locale surrounding a sculpture play a major role in its overall condition.)

Location Type (circle as many as apply to artwork's immediate surroundings)

Plaza	Park	School	Library	Rec./Community
Center				
Courthouse	Sports Facility	Garage	Post Office	Transit Facility
Other (please specify)				

Specific location information: (e.g. main entrance, office, media center, hallway, nearest room number)

General vicinity (check as many as apply)

- Rural (low population, open land) Suburban (residential setting outlying a major city)
- Town Urban/metropolitan
- Suburban
- Street/Roadside
- Near trees or overhanging branches

Is the artwork in a protective setting? (check if applicable)

- Protected from the elements (e.g., niche, canopy)
- Protected from the public (e.g., fenced)
- Strong or direct sunlight
- High humidity
- Near vents or heating elements
- Near swinging doors

Describe any other significant environmental factor (e.g. near an airport or subway)

Part III: Condition Information***Structural condition*** (check as many as apply)

Instability in the sculpture and its base can be detected by a number of factors. Indicators may be obvious or subtle. Visually examine the sculpture and its base.

	Artwork	Frame/base	No
Is the armature/internal support unstable or exposed? (look for signs of exterior rust)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any evidence of structural instability? (look for cracked joints, missing mortar or caulk or plant growth)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any broken or missing parts? (look for elements that are missing due to vandalism, fluctuating weather conditions, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any cracks, splits, breaks or holes? (look for fractures, straight-line or branching, which could indicate uneven stress or weakness in the material)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Surface Appearance

Bird guano (e.g. bird droppings, other animal/insect remains)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graffiti (note type: pen, spray paint, marker)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Black crusts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
White crusts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Streaking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Etched/pitted or otherwise corroded (usually applies to metal)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Metallic staining (e.g. runoff from copper, iron, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Organic growth (e.g., moss, algae, lichen or vines)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chalky or powdery (applies to stone only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Granular, sugary or eroding (applies to stone only)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Spalling or sloughing (applies to stone only) (parallel splitting off of the surfaces)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other (e.g. applied adhesives, gouges). Specify type and location of damage.

Does water collect in recessed areas of the sculpture and/or base?

Yes No Unable to determine

Surface coating

Does there appear to be a coating? Yes No Unable to determine

If known, circle type of coating: Gilded Painted Varnished Waxed Other_____

Is the coating in good condition? Yes No Unable to determine

Condition Assessment (check one)

In your opinion, what is the overall general appearance or condition of the sculpture?

- In urgent need of treatment
- Well-maintained
- Would benefit from treatment
- Unable to determine

Photographic Documentation should include:

- descriptive labels for digital images, such as detail of corrosion, graffiti, broken part, chipping, etc.
All images need to be labeled with Inventory Number followed by a dash. For example, PA1001-1, PA1001-2.
- Overview of piece from a minimum of 4 angles if 3-dimensional
- Details of important parts of imagery
- Details of condition problems
- Details of signature
- Details of foundry and or fabricator markings
- Details of signage found on site
- One image with a person in photo to establish scale

Appendix D: Public Art in Private Development – Review Chart

Public Art in Private Development – Review Chart

STAGE	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
I. Development Team Assembly				
	<p>The Applicant identifies the subject property, hires a Land Use Attorney, and begins to assemble their development team. The development team may consist of: an Architect, Landscape Architect, Engineer, and Land Use Attorney. The design professionals begin to conceptualize the highest and best use for the property.</p> <p>Based on the initial findings, the Applicant will strategize with the Land Use Attorney regarding the most efficient regulatory timeline and approval process. Depending on the size of the property and level of complexity (i.e. themes), this stage can be lengthy.</p>	<p>Public use space(s)/ publicly accessible open space(s) are identified on-site and off-site. Referencing the County's vision for public art (identified in the Montgomery County Public Art Roadmap), the Applicant will determine whether the project will include public art on private property.</p> <p>The typical timeframe for identifying potential locations for public art can vary depending on the complexity (i.e. themes) of the project.</p>	<p>Determine the feasibility of the development based on the existing conditions, future opportunities, and potential challenges. Identify Master/Sector Plan conformance goals and objectives.</p> <p>A public benefits package is required if the Optional Method of development is used. The Applicant will evaluate whether the Optional Method of development yields the highest returns for the development.</p>	<p>Determine the purpose and value added to the subject property based on the goals of the public benefits package.</p> <p>Determine the feasibility of the project, identify opportunities, and potential challenges.</p> <p>Public Art may be identified on-site as a branding tool that attracts the public to the subject property. Or a fee-in-lieu could be sought that can be applied to a local public facility. Ultimately, the public benefits package should directly relate to the needs of the community.</p>

Public Art in Private Development – Review Chart

II. Conceptual Discussions				
	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	<p>After the highest and best use is determined, the Applicant and the development team will meet with planning staff to discuss their initial design concepts and determine the necessary review process.</p> <p>The Applicant and planning staff will review the respective Master/ Sector Plan and Montgomery County Zoning Ordinance requirements.</p> <p>The approximate timeframe for meeting with staff is 2-weeks.</p>	<p>The Applicant and design professional meet with the planning staff to discuss their initial design concept for public art and preliminary options (location, approach, and goals). This meeting is typically referred to as a “pre-application meeting”, which means a meeting that occurs prior to filing the development application.</p> <p>The Applicant may also schedule secondary design meetings to go over their initial public art concepts with the Public Art Coordinator.</p> <p>The approximate timeframe for meeting with planning staff is 2-weeks.</p>	<p>Gain clear direction from planning staff and narrow down the design concepts.</p> <p>Meet with M-NCPCC staff to discuss the Sketch and/or new Site Plan applications.</p> <p>The Applicant is also required to host a community meeting, before filing their initial development application.</p>	<p>Identify and justify the need for public art as a “public benefit.”</p> <p>Meet with the Public Art Coordinator, prior to hosting a community meeting and before filing a new development application.</p> <p>The feedback gained at the community meeting will reinforce the justification of the public artwork.</p>
III. 1st Review – Development Application Filing				
<p>Once the new development application is officially accepted by the Montgomery County Planning Department, a Development Review Committee (DRC) date is set. Within 1-2 weeks after meeting with the DRC, the developer will present their initial design concept(s) to the Art Review Panel. At the first meeting with the Art Review Panel, the developer does not need to have an artist selected or commissioned, but should come prepared to discuss the initial concept(s) and be receptive to hearing substantive comments from the Art Review Panel.</p>				

Public Art in Private Development – Review Chart

STAGE	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	<p>The Applicant files the development application, the application is officially accepted, and the Development Application Review (DRC) date is set.</p> <p>The approximate timeframe for appearing at the DRC meeting is 4-weeks after the development application acceptance date.</p>	<p>After DRC, the Applicant will meet with the Art Review Panel to discuss the public art opportunity and initial design concept. The Public Art Coordinator will generate meeting notes that will be sent to the Applicant and lead reviewer.</p> <p>The approximate timeframe to schedule a meeting with the Art Review Panel and compile the meeting notes is 2-3 weeks.</p>	<p>Gather feedback from other public agencies and determine the limitations of the subject property.</p>	<p>Gather feedback from the Art Review Panel and begin to think critically about the purpose, goals, and objectives of the public art/ public benefits package.</p>

IV. Refinement of the Initial Development Application

After completing the DRC meeting, the developer will submit an online Art Review Panel application at least 2 weeks prior to the Art Review Panel target meeting date. The online application should include, at a minimum, the following information in preparation of their first review meeting with the Art Review Panel.

- Contact information for each member of the development team
- A description of the initial concept including the goal of the public artwork, and how the design meets or exceeds the goals of the applicable Master Plan, Sector Plan, Public Art Roadmap and approved guidelines
- A site plan or diagram (an illustrative sketch showing where the buildings, roads, green space, SWM, etc. will be located)
- Identification of a public art consultant, if any

Public Art in Private Development – Review Chart

	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	<p>The Applicant will refine the initial development application based on the feedback received from the DRC meeting.</p> <p>Depending on the complexity of the proposal, the Applicant may need to resubmit revised plans a few times to gain the support of the lead reviewers/agencies.</p>	<p>The Artist is selected and becomes a part of the development team. The Artist works very closely with the Architect, Landscape Architect, and Engineer to support the seamless integration of public art into the final design concept.</p> <p>The approximate timeframe for selecting an artist can vary depending on the restrictions placed on the property, the total budget for public benefits, and the willingness of the design team to work closely with the selected artist.</p>	<p>Address the concerns received at the DRC committee meeting and reasonably justify unresolved comments.</p>	<p>Address the initial comments while refining the initial concepts with the creative expertise of the selected Artist.</p> <p>The Artist becomes a part of the development team and not just an “after-thought”, as it relates to the overall project. The goal is not to provide “plop art”, but rather the artwork should fit the context of the surrounding community and satisfy specific needs.</p>

V. 2nd Review – Development Application Final Approvals

Once the Applicant and lead reviewer reach consensus on the refined development application a Planning Board Hearing date is established. The developer will meet with the Art Review Panel to review the final design concept. This second review will occur at least 5 weeks prior to the Planning Board public hearing.

At least 2 weeks prior to the Art Review Panel meeting date, the developer will submit, at a minimum, the following information in preparation for their second review.

- A revised Art Review Panel Application
- Any updates to the contact information of the development team

Public Art in Private Development – Review Chart

<ul style="list-style-type: none"> • Site Plan drawings (to scale) • Identification of the Artist and the Artist's credentials • 3D model of the proposed artwork (physical or digital representation) • A description of the proposed artwork's materials and required maintenance • A description of how the final design meets or exceeds the goals of the applicable Master Plan, Sector Plan, Public Art Roadmap and approved guidelines; and addresses the expectations of the Art Review Panel outlined during the first review meeting 				
	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	<p>The lead reviewer summarizes the necessary findings and provides final recommendations to the Planning Board. The final Staff Report will also include conditions of approval.</p> <p>The timeframe on completing the Staff Report is typically 4-weeks. Public notification is sent regarding the public hearing date and the posting of the final Staff Report.</p> <p>The public is send their comments to the lead review and/or testify at the public hearing.</p>	<p>The Applicant and selected Artist meet with the Art Review Panel to present their final public art proposal. The Art Review Panel takes a final vote on the Applicant's proposal.</p> <p>The Public Art Coordinator generates final meeting notes, which are included in the final Staff Report. The public is welcome to review the final Staff Report and revised drawings online and/or they may also testify at the public hearing.</p> <p>The timeframe for meeting with the Art Review Panel and generating final meeting notes (including the Art Review Panel's vote) is approximately 2-weeks.</p>	<p>Finalize the development application and gain the necessary approvals from the Planning Board.</p> <p>The Planning Board will hear testimony during the public hearing; however, the Planning Board has the ultimate authority to approve or modify the development application.</p>	<p>Finalize recommendations from the Art Review Panel and discussion notes will be provided in the context of the final Staff Report.</p> <p>The public is granted access to the Applicant's public art proposal in the final Staff Report posted online.</p>

Public Art in Private Development – Review Chart

VI. Initial Construction Meeting				
The development application will be approved by the Planning Board, before the initial pre-construction meeting can be set.				
	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	Prior to starting the physical construction of their development proposal, the Applicant will meet with M-NCPPC and the Department of Permitting Services (DPS) to go over the requirements of the certified plan and associated conditions of approval. The timeframe for getting the development plans certified and establishing an establishing a date for a pre-construction meeting date varies. Prior to start of the construction phase and after the developer has received the necessary entitlements, adequate financing is secured and the construction team is assembled.	The Public Art Coordinator will be invited to the construction meeting to review the public art site details with the selected Artist, the Applicant's project manager, and DPS. The timeframe to establish this meeting is 2-weeks.	Review the certified plan and associated conditions of approval and anticipate any potential problems and/or discrepancies. The goal will be to streamline the inspections process moving forward.	Review the certified plan, and associated public art site details and maintenance agreement. Gain a clear understanding of the construction schedule as it specifically relates to the public benefits.

Public Art in Private Development – Review Chart

VII. Inspection Period				
	Development Review Process	Process for Commissioning Public Art on Private Property	Development Review Process Goals and Objectives	Public Art Goals and Objectives
	In accordance with the conditions of approval, M-NCPPC and DPS will inspect the development throughout the construction process and upon request from the public.	M-NCPPC will inspect the public artwork on an annual basis to update the public art inventory and assess the condition of the artwork in the public realm.	Clear lines of communication as it relates to the construction schedule and foreseen challenges will be established.	Establish clear lines of communication as it relates to public benefits and foreseen challenges. Anticipate potential maintenance issues and drafting errors.

Appendix B: The Optional Method of Development Public Artworks Document (adopted 1988)



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

September 21, 1988

MEMORANDUM

TO: Montgomery County Planning Board
FROM: Staff, Urban Design Division
SUBJECT: Art Committee's Report on Artwork
in the Optional Method of Development

STAFF RECOMMENDATION

Staff supports the Committee's recommendations in general and commends their thoughtful approach to the subject of artwork in public use spaces. The Committee gave careful consideration to all points of view in the optional method of development and has made recommendations which are helpful and feasible. Staff, however, believes that further development of the review criteria, identified in Recommendation #4, page five of the report, is needed in order to help ensure that proposed artwork is indeed a "public amenity" capable of supporting greater densities under the optional method of development. Staff's proposed modifications to the Committee's recommendations are discussed in further detail under staff's discussion of Recommendation #4. Staff encourages the Planning Board to endorse and adopt the Committee's recommendations as modified by staff's comments.

STAFF DISCUSSION OF COMMITTEE'S RECOMMENDATIONS

To summarize, the Committee's recommendations are intended to improve the way in which artwork is evaluated by the Commission with the hope that such procedural changes will result in both technically and aesthetically successful artwork. With respect to ensuring adequate maintenance, the Committee supports the Commission's current procedures through site plan enforcement. Finally, given the Commission's removal rights as related to site plan enforcement, new removal criteria are recommended in order to guide the Commission's review of such proposals.

RECOMMENDATION #1: ESTABLISH A GENERAL PLANNING BOARD POLICY ON ARTWORK

Staff supports this recommendation because it will help promote artwork as an amenity, although it does not require all projects to incorporate art. If artwork is considered to be appropriate for a future project, the Planning Board's affirmative policy will help encourage developers to provide it at the time of project plan application.

RECOMMENDATION #2: ESTABLISH GOALS AND REVIEW OBJECTIVES FOR PROPOSED ARTWORK

Staff endorses the Committee's proposed goals and objectives for the Planning Board because it will help artists and design professionals respond better to public concerns related to artwork in the optional method of development.

Similar goals and objectives were successfully used by the staff during the previous reviews of optional method artwork. However, adoption of such goals and objectives by the Planning Board will help ensure a consistent application of these objectives.

RECOMMENDATION #3: ESTABLISH AN ART REVIEW PANEL TO ADVISE THE PLANNING BOARD AND ITS STAFF

Staff is in favor of creating an Arts Review Panel so long as it serves only in an advisory role to the staff and the Planning Board, provides comments within the established review period, and has members appointed by the Planning Director. In previous optional method projects, staff has often consulted with arts professionals outside the Commission in order to gain an independent assessment of art proposals. However, staff maintains the right to continue to evaluate an art proposal in terms of its visual compatibility, functional relationships, and overall image to the project. In staff's opinion, the creation of an arts review panel can complement and enhance the staff's review if members apply similar review criteria as used by the staff to achieve the Planning Board's goals and objectives.

RECOMMENDATION #4: ESTABLISH REVIEW CRITERIA TO GUIDE THE ART REVIEW PANEL'S EVALUATION OF PROPOSED ARTWORK

In staff's opinion, the proposed review criteria is a significant step forward in the right direction. Artists and other design professionals will be able to respond better to our expectations if they know in advance what our concerns are. In previous projects, staff has used some of these criteria with good results. The proposed criteria, however, does not go far enough in addressing the need for artwork to be responsive to the people who use public space.

In addition to the study committee's recommended review criteria, staff proposes that:

- o The artist should be required to respond to the users of a space in a way which clearly communicates a positive design statement and stimulates imagination and sense of wonder.

Staff believes that artwork, as an amenity offered in exchange for greater density, should be valued or perceived as a public benefit in order to be considered as an amenity. As such, artwork cannot be so esoteric and obscure in its meaning that people using the space fail to discover their own meaning for the piece, let alone the artist's intentions. Likewise, the artwork should not generate a negative or hostile image. (For example, a theme of some modern art has been man's alienation from society.) Cities are places where people come together, live, work, and play. Artwork can help us experience our shared humanity and arouse feelings of joy and delight.

Critics of such review criteria say that it could lower the quality of artwork and that over time the public has often gained appreciation for previously rejected pieces. While it is generally true that controversial artwork has gained public acceptance over time, proposed artwork does not have to be intentionally controversial or divisive. Conversely, an emphasis upon positive images does not require that artwork be superficially cute, representational, or speak to the lowest common denominator in order to be understood. There are many good examples of artwork considered to be excellent by arts professionals which also engage the imaginations of a wider public audience. Several local examples are the Albert Einstein Memorial by Robert Berks adjacent to the National Academy of Sciences on the Mall, the gigantic mobile by Alexander Calder suspended from the ceiling in the East Wing of the National Art Gallery, and a trompe l'oeil painting by Richard Haas located in the lower levels of the S. Dillon Ripley Center behind the Smithsonian Castle.

Staff agrees with arts professionals that artwork which does not adequately address the users of public use space may still be considered valid artwork. However, it is not appropriate to locate more privately inspired work in public spaces. Staff has included three articles (Attachments A, B, and C) by design and arts professionals who support the concept that artists must begin to speak to a larger audience.

RECOMMENDATION #5: CONTINUE TO CONDUCT, ON AN ONGOING BASIS, THE STAFF'S ANNUAL REVIEW OF THE STATUS OF OPTIONAL METHOD PROJECTS

Staff supports the recommendation to continue an annual review on the status of optional method projects. By doing so, staff will continue to communicate with owners responsible for adequate maintenance and, hopefully, help resolve maintenance concerns before they become a problem. Fortunately, the maintenance problems experienced to date suggest that owners, for the most part, are equally concerned about proper maintenance of their public use space. If confronted with maintenance concerns for unusual materials such as cast glass or neon, the staff will seek an independent expert's advice on an as-needed basis as we have done in the past.

One of the major problems in dealing with maintenance concerns is that the general public does not know what is happening and becomes concerned over time that nothing is being done. It can take some time to analyze the problem, identify solutions, resolve legal matters, and take action to rectify the problem. Staff suggests that owners place a small explanatory sign in an obvious location to explain the temporary removal or repair of a featured artwork. For larger spaces which require repair, such as the fountain at Guest Quarters Hotel in Bethesda, the owners should maintain an attractive appearance and public access if feasible during the repair process. While staff recognizes that legal matters may take a considerable amount of time to resolve, the public has the right to expect expedient repairs in order to enjoy the amenities offered in exchange for density. Staff will continue to hold violation proceedings for projects which do not expedite repairs in a timely basis in addition to scheduling the annual review as recommended by the study committee and if approved by the Planning Board.

RECOMMENDATION #6: REQUIRE NEW PROPOSED OPTIONAL METHOD ARTWORK TO INCLUDE MAINTENANCE SPECIFICATIONS DEVELOPED BY THE ARTISTS AND OTHER TECHNICAL CONSULTANTS FOR STAFF REVIEW AND APPROVAL

Staff fully supports this recommendation. Maintenance concerns for the proposed artwork will be better addressed if discussed in some detail prior to approval of the artwork. Specifications for the artwork will also help staff review the adequacy of the maintenance by owners.

RECOMMENDATION #7: ESTABLISH REMOVAL PROCEDURES FOR ARTWORK, IN ACCORDANCE WITH EXISTING PROCEDURES

Removal of artwork is an issue which may face the staff and Planning Board in the future. For those who wish to remove unpopular artwork, it is important to realize that optional method artwork is privately owned and has received approval from the Planning Board. Consequently, public acceptance and continued controversy can not be the basis for removal, since the Planning Board made a finding that the artwork was a desirable amenity. Staff commends the study committee for exploring the legal issues surrounding removal of optional method art and clarifying the scenarios under which it can be removed. Also, the proposed review criteria for removing artwork under the two scenarios will help provide some guidance to staff and the Planning Board when asked to consider the removal of approved artwork. Given the property rights of owners to retain artwork in perpetuity so long as it remains safe, and in conformance to the approved site plan, proposed artwork should be as carefully evaluated by staff and the Planning Board as any other enduring feature of the proposed plan.

KKM:ab/report.kkm

MCPB
9/29/88
Item #21



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

August 1, 1988

Dear Commissioners:

The study committee on Artwork in the Optional Method of Development is pleased to submit its report to the Planning Board for its consideration. A list of the seven members who have helped develop this report is attached. The committee has worked closely with your staff exploring the issues involved with artwork as an amenity, has given specific attention to the Commission's current review and approval process, maintenance procedures, and removal rights as related to artwork. The committee did not and was not asked to explore the question of whether or not artwork as amenity is desirable, although all members of the committee share a sincere interest in the arts and support their inclusion in development. Our recommendations, we hope, represent a balance between the various interests involved.

This report recommends policies and procedures for the Planning Board to consider which we believe may improve upon the current approach used by the Commission. Experience with the optional method projects to date has yielded some insights from which to learn. The recommendations in our report are based upon the following premises:

1. Artwork is a special feature which should be encouraged to be incorporated into optional method projects, due to its unique ability to enrich one's enjoyment of public use space.
2. The recommendations of the committee should in no way extend the amount of time the Commission gives to project plan and site plan review.
3. The likelihood of problems associated with the design/approval, implementation, and maintenance of the artwork can be minimized by recommendations designed to improve communication and understanding of how successful artwork can be achieved.
4. Optional Method Artwork is privately-owned with all the legal rights of property-ownership even though the work is publicly on display and part of the public benefit requirement in exchange for an increase in density.

We hope that the Planning Board, in giving serious consideration to the committee's recommendations, will benefit from our report in time for their review of the Optional Method Development proposed for Silver Spring. It is our hope that our recommendations will improve the quality and public nature of artwork in these optional method projects, help ensure adequate maintenance, and clarify procedures regarding removal.

The members of the committee want to express their appreciation for all the work Karen Kumm Morris did to help us. Her support certainly made our job much easier and her knowledge of the optional method projects, their art works, and the problems that have arisen during the development of the projects was invaluable.

Serving on this committee has been an interesting and informative experience for all of us.

Thank you for your consideration.

Members of the Study Committee on
Artwork in Optional Method Projects

STUDY COMMITTEE ON ART IN THE OPTIONAL METHOD PROJECT

COMMITTEE MEMBERS

Burt Kubli, Resident Representative

Jane Allan, Legal Representative

Rosalie Silverberg, Resident Representative

Bette Lewis, County Government Representative

Jim Soltesz, Optional Method Developer Representative

Marcia Goldberg, Commission Representative

Ellouise Schoettler, Artist/Resident Representative

JA:ms
Attachments

RECOMMENDED POLICIES AND PROCEDURES FOR ARTWORK IN THE OPTIONAL METHOD OF DEVELOPMENT

A report by the Study Committee on Artwork
in the Optional Method of Development

INTRODUCTION

In February, 1988, the Montgomery County Planning Board approved the formation of a study committee to review issues and problems associated with the approval of artwork and subsequent installation and maintenance of the artwork in projects developed under the Optional Method within CBD Zones. The Board selected a seven-member committee representing a variety of diverse interests and requested that the committee submit a report with recommendations to the Planning Board. The committee has completed that task. This report presents their recommendations for new policies and procedures. In addition, the report includes a brief discussion of problems and issues related to the artwork which influenced the committee's recommendation.

PROBLEMS AND ISSUES

In order to offer effective recommendations, the committee first explored with Commission staff the typical problems experienced with the provision of artwork. Artwork in public areas, especially art purchased with public funds, often has been plagued by controversies which can range from the public's unacceptance of the artwork to lack of maintenance and unsafe conditions. Private artwork offered as a public amenity in exchange for increase in density also experiences some of the same controversies which affect public art. However, there is a significant difference between the two types. Artwork provided in the Optional Method of Development is privately owned, although subject to the review and approval of the Planning Board in accordance with standards set forth in the Zoning Ordinance. (For example, the Planning Board cannot require the developer to pursue one artist selection process versus another.) As the committee began to understand the private-ownership rights of owners/developers, our understanding of the unique nature of artwork in the optional method projects helped us to shed some light into the nature of the problems and possible solutions.

The majority of problems identified by the committee fall into two categories: 1) selection, design and review procedures, and 2) implementation. Maintenance problems are also just beginning to emerge since most of the artwork is relatively new.

In the area of selection procedures, the developer has the right to choose artists in whatever manner he or she decides. However, if the artist and the development team are not compatible, a successful collaboration may not be achieved and a myriad of communication and implementation problems can ensue. Another problem, identified by the Commission staff occurs during the review of the art proposal. While the committee believes that the staff has sufficient design expertise to review art in the context of a project plan review (e.g., evaluating the art's visual compatibility, functional relationships, and overall image within the built environment), some developers are concerned that their art proposals are subjected to the aesthetic subjectivity of only Commission staff.

Some problems have emerged at the time of installation of the artwork due to technical problems with the design or construction of the design. In projects where there has been a successful working relationship and a team commitment to assist the artist in creating successful artworks, the results have been technically and aesthetically successful. If the working relationship is not good, it is more difficult to solve technical problems facing the artist. At times, the communication among consultants breaks down, or no one plays the role of facilitator and troubleshooter. In many cases, the problems of implementation stem from the process the developer chose to select the artist and a design team.

Adequate maintenance of the artwork is a concern which has been raised by the Planning Board, by staff and by community residents. It is also a major concern of the owners. The committee recognizes that in order for the integrity of the artwork to be maintained, maintenance concerns should extend beyond the physical maintenance of the piece to ensure that the setting of the artwork is also respected. (For example, building signage which is subject to change should not conflict with the integrity of the artwork.) However, Commission staff believe that it is too soon to tell how much of a problem maintenance concerns will be in the future. There are instances where fountains have malfunctioned and vandalism has occurred which are being rectified by the owners as part of their commitment to maintain the amenities of their projects. The study committee finds that the Planning Board's interest in addressing adequate maintenance reflects forward thinking and commends the Board for focusing upon this area.

Among the various problems identified by the committee, the most sensitive and controversial one deals with the issue of what criteria should be used to evaluate the proposed artwork. In other words, are some artworks more acceptable than other works in a public space...should there be different criteria applied to publicly displayed artwork as opposed to a private collection? While the committee recognizes the distinction between public and private art in optional method projects, the Zoning Ordinance characterizes these amenities as public and requires that public amenities, such as art, achieve the "creation of an environment capable of supporting greater densities and intensities of development" in order to justify the increase in density.

Currently, there is a nation-wide debate among art professionals, local governments, and citizen groups over whether or not artwork in public spaces should be required to be more responsive to the public who are the users of the space. The issue is fraught with controversy because of censorship questions and the subjective nature of art. What is considered by one person to be an intriguing and successful piece may not be appreciated by someone else. Part of the public acceptance problem with art in general, especially contemporary art, is that there is often a gap of understanding between the artist's intentions and the public's understanding.

The problems and issues associated with artwork have represented a challenge to the committee. The committee recognizes that community residents have expressed concerns over the selection of artwork. Also, developers have faced problems and uncertainties in proposing art as amenity. The committee members, however, believe that there are solutions which can minimize the likelihood of problems with art in optional method projects.

RECOMMENDATIONS

In making recommendations to mitigate some of the problems and address the issues, the committee has attempted to look at these concerns from all points of view. The rights of the artist, the owner/developer, and the general public are all legitimate and important factors to be considered and were. A unique consensus regarding recommendations has emerged from our discussions. The first and foremost was a confirmed support for the arts. The following recommendations are aimed at improving the quality of art and the likelihood that it will be appreciated as a public benefit.

RECOMMENDATION #1: ESTABLISH A GENERAL PLANNING BOARD POLICY ON ARTWORK.

The committee strongly recommends that the Planning Board adopt a written policy which endorses artwork as a desirable amenity to be included in optional method projects for the CBD Zones. The committee suggests that the Board continue to view artwork as a cultural enrichment which can help promote central business districts as cultural and social centers for the community. Although artwork is only one of many features in a proposed plan, it can, if successful, make a substantial difference in one's enjoyment of public use space. Potentially, it can communicate joy, delight, and wonder, promote positive contact among members of the community, and even, stimulate curiosity and interest in the community's heritage.

The Board should continue to be receptive to the broadest possible definition of art, supporting the development and creation of all innovative programs, facilities, and art amenities which encompass a variety of artistic expressions.

RECOMMENDATION #2: ESTABLISH GOALS AND REVIEW OBJECTIVES FOR PROPOSED ARTWORK.

The committee recommends that the Planning Board clarify its goals and objectives for proposed artwork. With respect to goals, the committee suggest that the Planning Board support artwork which produces over time a diverse collection of artwork, achieves aesthetic excellence, establishes over time a sense of community identity and is potentially reflective of the community. In short, approved artwork should help improve the quality of life in the central business districts.

In order to effectively integrate artwork into the public use space and achieve the goals stated above, the committee specifically recommends the following review objectives:

- o Achieve aesthetic excellence in approved artwork.
- o Ensure an appropriate interaction between the art and the architectural setting in terms of scale, materials, and context.
- o Ensure public access and invite public participation.
- o Encourage the developer to initiate collaborative planning at the earliest possible time among artists, architects, landscape architects, and engineers.
- o Ensure the long-term durability of permanent artwork by approving work which does not require excessive maintenance.

- o Encourage a rich variety of the arts including permanent as well as temporary pieces; objects as well as programmed special events.
- o Increase public understanding and enjoyment of the art through interpretive information and/or programmed events.
- o Achieve a collection of commissioned art which is unique and potentially contributes in a positive way to the identity of the community.

RECOMMENDATION #3: ESTABLISH AN ART REVIEW PANEL TO ADVISE THE PLANNING BOARD AND ITS STAFF.

The study committee recommends that an on-going Art Review Panel should be established in order to provide an independent, professional review of proposed artwork, and to assist in achieving the Board's goals and objectives. Such a review panel should be considered only as an advisory group to the Planning Board and its staff. All CBD optional method projects proposing art would be required to be reviewed by the Art Review Panel.

The Art Review Panel should be comprised of no less than five voting members appointed by the Director of Planning. Each member's term would run approximately one year and would extend longer if actively engaged in the review of a particular development. Members should be required to remain on the Panel for the entire review process of a specific project.

Representation of diverse interests on the Arts Review Panel should be achieved by selecting one business/development representative, one community resident, and three local arts professionals. Art professionals who are recognized and respected in their fields may include the following arts related professionals: artists, architects, landscape architects, art critics, curators, and historians. Members should be selected on the basis of their (a) knowledge and expertise of contemporary visual or performance art, as related to the public outdoor context, (b) willingness to fully participate in a review process, and (c) knowledge of or involvement with the local resident community. In special circumstances, the Panel may invite or consult with additional expert professionals or community participants to advise them in the evaluation of a proposed work of art.

The study committee strongly recommends that the Art Review Panel's work should be integrated into the current review time frame for project plans and site plans without extending the required length of review time. This can be accomplished at the time of project plan review by transmitting the proposed project plan application with the conceptual art proposal directly to the Art Review Panel, just as staff transmits the applications to other outside agencies. The Art Review Panel would be required to review the plans within 30 days of receiving the submittal, well within the Commission's required 90 day review limit for project plans.

The study committee recommends a 30 calendar day review period for the art proposal for project plans in order to permit Commission staff time to evaluate their comments and respond to them prior to the Planning Board's hearing. For site plan review, the Art Review Panel should respond with the comments no later than 21 calendar days due to the required 45-day review requirements for site plans. If the Planning Board reviews project plans prior to the formation of the

Art Panel, the study committee urges the Planning Board to condition their approval of project plans to require applicants to submit their art's program to the Arts Review Panel, should it be established prior to submitting a site plan application.

During the course of their review, the Art Review Panel should hold at least one review session for the purpose of hearing the applicant's presentation and for providing preliminary review comments. If necessary, a second session may be held to allow the applicant to respond to preliminary comments and submit final art proposals. The committee feels strongly that the Art Review Panel's review sessions should not be considered as a "public hearing." The study committee believes that the proper forum for general public comments and debate is during the Planning Board's official public hearing for the project. The primary purpose of the Art Review Panel is to provide an experts' evaluation of the proposed artwork. The Panel's report to the Commission staff will be included in the staff report to the Planning Board.

RECOMMENDATION #4: ESTABLISH REVIEW CRITERIA TO GUIDE THE ART REVIEW PANEL'S EVALUATION OF PROPOSED ARTWORK.

The study committee believes that the Art Review Panel will better achieve the Commission's art policy and objectives if they apply consistent review criteria in their evaluations. The criteria should reflect the Commission's goals and objectives but in more specific terms. Also, such criteria can provide applicants and the community with a greater understanding of the Commission's expectations, reducing somewhat the uncertainty associated with art proposals. The committee recommends that the following criteria should be used by the Art Review Panel as guidelines assisting their evaluation.

- o The proposed artwork achieves the highest quality of excellence.
- o The proposed artwork shall be the result of a process initiated by the developer which will result in a collaborative effort among the project's artists, architects, landscape architects, developer, and possibly other related arts professionals such as art consultants.
- o The proposed artwork shall be located on-site in a publicly accessible and visible location. Off-site locations can be considered if the proposed location is related to the proposed development such as adjacent sidewalks, traffic medians, bridges, and adjoining parks and plazas. Artwork can be integrated into floors, walls, and even ceilings within the public areas of the projects. Sites within private space such as office lobbies are not eligible for location of artwork as public amenity.
- o The artist and other design professionals shall be required to demonstrate how the proposed artwork effectively interacts with the specific site and public users of the space, and responds to the urban design relationships of the surrounding area.
- o The artist shall be required to demonstrate the public nature of the artwork. The artwork should be capable of engaging the public interest in a positive way by the work's imaginative concept, form and scale, color, content, and/or choice of media.

- o The artist shall submit a descriptive text, drawings and/or a maquette with sufficient detail in order to provide clear understanding of the proposal.
- o The majority of artwork shall be permanent in nature so as to be enjoyed on a continuous basis. Programmed arts events, however, are also encouraged to add vitality and generate new public interest.
- o Proposed artwork should be a commissioned work for the specific site and shall not be mass produced or standardized in its design.
- o The artist shall be required to submit a detailed maintenance specification at the time of site plan review to ensure that the developer and the Commission understand the maintenance requirements and consider the specifications to be adequate.
- o The developer shall demonstrate that he/she has contractual agreements with the artist and other design professionals which ensure that the artist is aware of and involved in any required changes in site design which may affect the artwork and which ensure that the artist's proposed work is technically feasible.

RECOMMENDATION #5: CONTINUE TO CONDUCT, ON AN ON-GOING BASIS, THE STAFF'S ANNUAL REVIEW OF THE STATUS OF OPTIONAL METHOD PROJECTS.

Proper maintenance of installed artwork is a significant concern of this committee to help ensure that artwork maintains its value as a public amenity and its original integrity as a work of art. It is also a concern of the owners/developers of optional method artwork as well as the Commission. The committee recommends that the Planning Board continue to conduct an annual review on the status of Optional Method Projects which would include the status of the artwork as was done in January of this year. An annual review would help identify maintenance-related problems and recommend proper maintenance operations as necessary. When special problems occur, requiring a more specialized knowledge of certain materials, the staff should seek the necessary professional expertise to assist them in recommending appropriate maintenance solutions.

The study committee did consider recommending that the Board hire a professional conservator to annually review the artwork. A minority of the committee supports this approach and believes an arts expertise is needed to evaluate the condition of artwork and to help prevent maintenance problems from occurring. Upon closer review, the committee became aware that, due to the diversity of pieces, a number of conservators with different art specialities would be necessary, that consulting fees typically exceeded \$100 per hour, and that more extensive staff management would be required than originally anticipated. For these reasons, a majority of the committee does not support hiring conservators. The committee is in agreement that the responsibility for adequate maintenance rests squarely on the shoulders of owners/developers. If a piece begins to show signs of deterioration, malfunctions, or is repeatedly vandalized, it is the Commission's responsibility to require the owner/developer to promptly rectify the situation.

RECOMMENDATION #6: REQUIRE NEW PROPOSED OPTIONAL METHOD ARTWORK TO INCLUDE MAINTENANCE SPECIFICATIONS DEVELOPED BY THE ARTISTS AND OTHER TECHNICAL CONSULTANTS FOR STAFF REVIEW AND APPROVAL.

The committee recommends that all proposed optional method artwork should include maintenance specifications which are tailored to the specific needs of the artwork. The specifications could then be referenced in the site plan enforcement agreement, legally requiring the owner/developer to abide by the specifications. The committee views proper maintenance to be in the owner's best interest as much as it is in the public's interest. For approved artwork, which is already installed in many sites in Bethesda and Silver Spring, the committee recommends that owner's voluntarily provide maintenance specifications to Commission staff in order to provide inspection guidance for the future and assist the developer in maintenance.

RECOMMENDATION #7: ESTABLISH REMOVAL PROCEDURES FOR ARTWORK, IN ACCORDANCE WITH EXISTING PROCEDURES.

The committee recognizes that there are parameters under which the Planning Board approves and monitors optional method projects. If an artwork has been approved, as a part of an optional method project, this means that the Planning Board has made a finding that the project, including the artwork, meets the requirements of the Zoning Ordinance. Thereafter, the Planning Board can review a proposal to remove art under two scenarios:

- 1) an application by the property owner/developer to remove the art by amendment to the approved project plan and site plan,
- 2) as a site plan violation proceeding held by the Planning Board to address alleged violations which may have been brought to the Board's attention by the staff, other agencies or members of the public.

In reviewing proposals to remove artwork under either scenario, the committee recommends that the Board consider the following:

- o The artwork is deteriorating, requires excessive maintenance, or has flaws in design or workmanship.
- o The artwork creates a public safety hazard which was unforeseen at the time of approval.
- o The owner/developer wishes to replace the artwork with a different yet comparable public amenity.
- o Significant changes in the use, character, or physical design of the site create a less than desirable setting for the artwork.
- o The security of the artwork cannot be guaranteed and it is subject to repeated vandalism.

The committee understands the sometimes stormy public reaction to artwork and hopes that new artwork which is evaluated under the recommended criteria will better address public concerns. However, continued public controversy over approved artwork in the optional method projects cannot be a legitimate basis for removal if the artwork remains in conformance with the approved site plans. If

the Planning Board faces the question of removal under the scenarios identified above, the committee recommends that the Board take a cautious approach before requiring or approving removal of art in order to gain perspective over time on the validity of the piece in terms of its relationship to the site, and its contribution to the overall collection of artwork in public use spaces.

CONCLUSIONS

The committee believes that the recommendations embodied in this report will have a positive affect upon the quality of future artwork considered by the Planning Board in the optional method projects. Although we can not guarantee that future artwork will be less controversial given the subjective nature of art, we believe that the recommendations will improve the likelihood of technically and aesthetically successful work which is a public benefit.

Optional Method of Development Public Artworks

The Optional Method was created in 1974 as a means of acquiring a number of public facilities and amenities in the intensively developed CBDs of Bethesda, Silver Spring, Wheaton, and Friendship Heights. Section 59-D-2.0 of the County's zoning code provides the M-NCPPC with legal authority to review and approve Optional Method projects.

The public goal of the Optional Method is to create a more attractive urban environment through a package of public amenities provided by private developers to support the increased density of a project. To qualify for the Optional Method, a minimum of 20 percent of the project site area must be set aside for public use and a combination of facilities and amenities must be provided. Facilities and amenities which could be combined to qualify for increasing density include: recreational areas, parks, gardens, lawns, plazas, fountains, walks, pathways, promenades, arcades, streetscaping, public artworks, and day care or other public use facilities.

Artworks approved through the Optional Method, must be located in publicly accessible and visible on-sight locations or off-sight location related to the proposed development. These public artworks are subject to the review and approval of the Planning Board in accordance with standards set forth in the zoning ordinance. Although the artworks approved through the Optional Method are public in nature, they are privately owned.

Since many applications for development under the Optional Method in the mid 1980s had included art projects, the Planning Board convened a task force to study issues relating to approval, installation, and maintenance of the artworks. Formed in February 1988, the task force reviewed M-NCPPC procedures for approving public artworks as an Optional Method amenity and recommended new policies and procedures.

Study Committee on Art in the Optional Method Project

ART REVIEW Panel

The Study Committee on Artwork in the Optional Method Projects prepared and submitted a report to the Planning Board in 1988. The Planning Board approved the policies and procedures and goals and objectives for selecting public art recommended by the Committee. A document containing the complete policies and procedures now in effect is available to the public in the Urban Design Division of The Maryland-National Capital Park and Planning Commission, and the goals and objectives defined by The Study Committee for reviewing proposed artwork are included in this appendix on pages 35 and 36.

The recommendations in the Study Committee's report were based on the following premises:

1. Artwork is a special feature which should be included in optional method projects, because of its unique ability to enrich one's enjoyment of public use space.
2. The recommendations of the committee should in no way extend the amount of time the Commission gives to project plan and site plan review.
3. The likelihood of problems associated with the design/approval, implementation, and maintenance of the artwork can be minimized by recommendations designed to improve communication and understanding of how successful artwork can be achieved.
4. Optional Method Artwork is privately-owned with all the legal rights of property-ownership even though the work is publicly on display and part of the public benefit requirement in exchange for an increase in density.

Members of the Study Committee on Art in the Optional Method Project (1988):

Burt Kubli, Resident Representative

Jane Allan, Legal Representative

Rosalie Silverberg, Resident Representative

Bette Lewis, County Government Representative

Jim Soltesz, Optional Method Developer Representative

Marcia Goldberg, Commission Representative

Ellouise Schoettler, Artist/Resident Representative

Goals and Objectives For Selecting Public Artwork

Goals

1. Achieve aesthetic excellence in approved artwork.
2. Ensure an appropriate interaction between the art and the architectural setting in terms of scale, materials, and context.
3. Ensure public access and invite public participation.
4. Encourage the developer to initiate collaborative planning at the earliest possible time among artists, architects, landscape architects, and engineers.
5. Ensure the long-term durability of permanent artwork by approving work which does not require excessive maintenance.
6. Encourage a rich variety of the arts including permanent as well as temporary pieces, objects as well as programmed special events.
7. Increase public understanding and enjoyment of the art through interpretive information and/or programmed events.
8. Achieve a collection of commissioned art which is unique and potentially contributes in a positive way to the identity of the community.

Objectives

1. The proposed artwork achieves the highest quality of excellence.
2. The proposed artwork shall be the result of a process initiated by the developer which will result in a collaborative effort among the project's artists, architects, landscape architects, developer, and possibly other related arts professionals such as art consultants.
3. The proposed artwork shall be located on-site in a publicly accessible and visible location. Off-site locations can be considered if the proposed location is related to the proposed development such as adjacent sidewalks, traffic medians, bridges, and adjoining parks and plazas. Artwork can be integrated into floors, walls, and even ceilings within the public areas of the projects. Sites within private

space such as office lobbies are not eligible for location of artwork as public amenity.

4. The artist and other design professionals shall be required to demonstrate how the proposed artwork effectively interacts with the specific site and public users of the space, and responds to the urban design relationships of the surrounding area.
5. The artist shall be required to demonstrate the public nature of the artwork. The artwork should be capable of engaging the public interest in a positive way by the work's imaginative concept, form and scale, color, content, and/or choice of media. The artwork shall strive to be contextual to the site, such as relating to any cultural, historical or visually unique aspects. The piece should also encourage physical interaction, if appropriate.
6. The artist shall submit a descriptive text, drawings and/or a maquette with sufficient detail in order to provide clear understanding of the proposal.
7. The majority of artwork shall be permanent in nature so as to be enjoyed on a continuous basis. Programmed arts events, however, are also encouraged to add vitality and generate new public interest.
8. Proposed artwork should be a commissioned work for the specific site and shall not be mass produced or standardized in its design.
9. The artist shall be required to submit a detailed maintenance specification at the time of site plan review to ensure that the developer and the Commission understand the maintenance requirements and consider the specifications to be adequate.
10. The developer shall demonstrate that he/she has contractual agreements with the artist and other design professionals which ensure that the artist is aware of and involved in any required changes in site design which may affect the artwork and which ensure that the artist's proposed work is technically feasible.

The Silver Spring Art Review Panel For Optional Method Projects

The Art Review Panel was established in 1988 and is intended to provide M-NCPCC with an expert evaluation of proposed artwork for Optional Method Projects and to encourage successful public artwork. The panel and staff review are guided by procedures approved by the Planning Board and the goals and objectives included in this booklet on pages 35 and 36.

The Art Panel is advisory to staff and the Planning Commission, and their review comments are incorporated into staff's reports to the Board. Each panel member is appointed by the Planning Director. The current panelists are as follows:

Citizen Representative:

**Mrs. Phyllis Cochran, Teacher
Silver Spring**

Arts Professional:

**Ralph Bennett, Professor of Architecture
University of Maryland**

Arts Professional:

**Cindy Kelly, Arts Consultant
Baltimore**

Arts Professional:

**Burt Kubli
National Endowment for the Arts**

Business Representative:

**Gene Smith
E. M. Smith Associates**