


April 28, 2010

REQUEST FOR RECONSIDERATION**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel
301.495.4646 

RE: Reconsideration Request for Islamic Center of Maryland,
Preliminary Plan # 12002041B

With this memorandum we forward for the Board's review a request for reconsideration of the Islamic Center of Maryland preliminary plan approval filed on April 5, 2010, and again on April 6, 2010, by the Applicant, Islamic Center of Maryland¹.

The initial request was made in the form of a letter from the Applicant attached to an email dated April 5, 2010. The significance of the format is that, although the letter does not specifically address the issue for which the reconsideration is being requested, the email is captioned "Condition #5, procedure info." We address Applicant's grounds as it relates to their objection to Condition #5 as set forth in the Resolution. Copies of the Resolution, correspondence from the Applicant, and the initial response from Chairman Hanson are attached.

I. BACKGROUND

At its March 11, 2010, meeting, the Board approved, with conditions, the Islamic Center of Maryland preliminary plan to create one lot on 13.05 acres of land in the RE-1 zone, located on the east side of Woodfield Road, approximately 500 feet north of Cypress Hill Drive ("Property"), in the Gaithersburg & Vicinity master plan area.

¹ Although Applicant did not specifically request a Reconsideration of the Resolution, it requested that the Board's adoption of the Resolution be considered separate from the Consent Agenda and be set for public hearing. Chairman Hanson stated in his response that he would consider the letter a request for reconsideration under Rule 4.12.1, as the only issue for the Board to consider at an adoption of a resolution is whether the resolution is consistent with the Board's earlier decision on the matter, in this case at the public hearing held March 11, 2010. In order to bring the request into compliance with Rule 4.12.1, Staff has sent copies of relevant correspondence to all interested parties.

Condition No. 5 of the Planning Board's Resolution states:

"As part of the previously required landscape and lighting plan, the Applicant must develop a plan for screening the eastern and southern property boundaries. The plan must include a minimum planting area 25 feet in width along the eastern and southern property boundaries and must be submitted for review to adjacent property owners, and review and approval by MNCPPC staff with the record plat application. The submittal to MNCPPC staff must include verification that the proposed plan was submitted to adjacent property owners."

The preliminary plan was approved by a 4-0 vote, on motion of Commissioner Presley, seconded by Commissioner Wells-Harley, Commissioners Presley, Wells-Harley, Dreyfuss and Hanson voting in favor, with Commissioner Alfandre being absent. The Resolution memorializing the Board's approval was mailed on April 14, 2010.

II. APPLICABLE RULES

A reconsideration request must "specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause." The Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. In this case, Commissioners Hanson, Presley, Wells-Harley and Dreyfuss are eligible to move for reconsideration. If there is no motion for reconsideration, the request for reconsideration is denied. Any motion to reconsider must be supported by a majority of the Board members present who either participated in the previous decision or read the record on which it was based. Therefore, Commissioner Alfandre must review the record of the March 11, 2010, hearing in order to vote on whether to grant the Applicant's reconsideration, if a motion is made to do so.

III. RECONSIDERATION REQUEST

The Applicant indicates in its various correspondence to the Chairman that it did not have an opportunity to testify at the hearing on its preliminary plan application due to a scheduling mix-up. My understanding is that members of the surrounding community who had appeared to testify were told (by whom we have been unable to confirm) that the hearing on the preliminary plan, initially scheduled in the morning, was being moved to the afternoon because the Board was running late. That message was then passed to the Applicant. However, the hearing was held before lunch without either the Applicant or the community in attendance. Neither had the opportunity to address the concerns raised by the Board, although staff was clear about the community's concerns with regard to the landscape buffer required by Condition #5.

When the Applicant returned, Rose Krasnow offered the Applicant's representatives an opportunity to testify before the Board, even though the record had been officially closed. They declined to do so. However, upon reviewing the taped recording of the proceedings, the

Applicant believes that given an opportunity to testify, the outcome of the Board's decision would have been different.

IV. RECOMMENDATION

We believe there is sufficient grounds raised by the Applicant to meet the requirements of Rule 4.12.1. Both the Applicant and the surrounding community members should have had an opportunity to testify and answer questions posed by the Board. If the Board determines that the reconsideration request demonstrates that there was a mistake, inadvertence, surprise, or fraud in its earlier decision, or that the applicant has shown other good cause sufficient to merit reconsideration, the Board should grant the request.

In the event the Board grants Applicant's request, a hearing should be set for the Board to reconsider Condition #5 of the Resolution on May 27, 2010, which is the earliest date available on the Board's agenda after the required notice period.

IV. ATTACHMENTS

Attachment 1 -- Resolution

Attachment 2 – Reconsideration Request:

- 4/5/10 email with attached letter from Applicant, and
- 4/6/10 email from the Applicant

Attachment 3 -- Initial Response from Chairman Hanson

ATTACHMENT ONE



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

APR 14 2010

MCPB No. 10-33
Preliminary Plan No. 12002041B
Islamic Center of Maryland
Date of Hearing: March 11, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review amendments to approved preliminary plans; and

WHEREAS, on January 12, 2010, Islamic Center of Maryland ("Applicant"), filed an application for approval of a preliminary plan amendment to amend a previously approved preliminary plan¹ that created 1 lot on 13.05 acres of land in the RE-1 zone, located on the east side of Woodfield Road, approximately 500 feet north of Cypress Hill Drive ("Property" or "Subject Property"), in the Gaithersburg & Vicinity master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan amendment was designated Preliminary Plan No. 12002041B, Islamic Center of Maryland ("Amendment") and

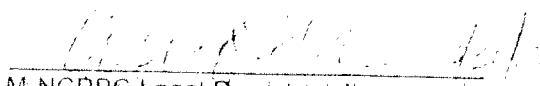
WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 19, 2010, revised on March 4, 2010, setting forth its analysis, and recommendation for approval, of the Amendment subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Amendment by Staff and the staff of other governmental agencies, on March 11, 2010, the Planning Board held a public hearing on the Amendment (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

¹ Preliminary Plan No. 120020410 was adopted by the Planning Board January 12, 2002, and mailed on January 30, 2003. Applicant later filed an amendment thereto as Preliminary Plan No. 12002041A, which was later withdrawn.

Approved as to
Legal Sufficiency


M-NCPPC Legal Department

www.MCPackandPlanning.org

E-Mail: mcp-chairman@mncppc.org

WHEREAS, on March 11, 2010, the Planning Board approved the Amendment subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Dreyfuss, Hanson, Presley and Wells-Harley voting in favor, Commissioner Alfandre being absent.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 12002041B that amends Preliminary Plan No. 120020410 that created 1 lot on 13.05 acres of land in the RE-1 zone, located on the east side of Woodfield Road, approximately 500 feet north of Cypress Hill Drive ("Property" or "Subject Property"), in the Gaithersburg & Vicinity master plan area ("Master Plan"), subject to the following conditions:

- 1) Deletion of condition #4 in the Opinion for Preliminary Plan No. 120020410 with the mailing date January 30, 2003 which states: Record plat to show delineation of a Category I conservation easement over the area of forest conservation.
- 2) The applicant must replace the existing Category I Forest Conservation Easement by providing 2.96 acres of off-site forest planting or equivalent credit in a forest mitigation bank.
- 3) The Applicant must submit a Final Forest Conservation Plan in accordance with Section 109-B of the Forest Conservation Regulations for MNCPPC staff approval within 30 days of the Planning Board's resolution approving the preliminary plan amendment.
- 4) The Applicant must submit an application to revise the existing record plat to remove the conservation easement within 6 months of the date of the Planning Board's resolution approving the preliminary plan amendment.
- 5) As part of the previously required landscape and lighting plan, the Applicant must develop a plan for screening the eastern and southern property boundaries. The plan must include a minimum planting area 25 feet in width along the eastern and southern property boundaries and must be submitted for review to adjacent property owners, and review and approval by MNCPPC staff with the record plat application. The submittal to MNCPPC staff must include verification that the proposed plan was submitted to adjacent property owners.
- 6) All other previous conditions of approval contained in Planning Board Opinion for Preliminary Plan No. 120020410 with the mailing date January 30, 2003 remain in full force and effect.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The Planning Board approved the Applicant's request to meet the forest planting requirements off-site and remove the Category I Forest Conservation Easement in which on-site planting was to occur from this Property for three reasons. First, the project site is bounded by an institutional use on one side and residential uses on the other three sides, which make the ecological usefulness of a small forest negligible. Second, there are no high-priority stream valleys or environmental buffers on this site that would require afforestation or reforestation. Third, the easement is a standalone easement not connected or adjacent to any larger contiguous forest, and given the proposed activities that the Islamic Center is suggesting for the area adjacent to the current easement, the Planning Board believes that this creates a high likelihood of future forest conservation violations. The Planning Board finds removing the easement from this property and requiring the Applicant to meet the forest conservation requirements either off-site or by purchasing credits in an MNCPPC approved forest bank is appropriate and creates a better opportunity to meet the goals of forest conservation in the County.

The Planning Board approved Preliminary Plan No. 120020410 based on a finding that the associated Forest Conservation Plan met the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As previously described, the Applicant now wants to change the way the plan meets those requirements by doing off-site, rather than on-site, forest planting. Loss of the easement triggers an off-site planting requirement of 1.48 acres to compensate for previous on-site planting. Furthermore, to compensate for the fact that the easement was previously recorded, the Planning Board finds that off-site planting on an additional 1.48 acres, which is the size of the existing easement, for a total of 2.96 acres of planting in an approved forest bank, will meet the requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information: and

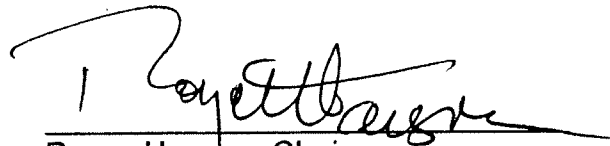
BE IT FURTHER RESOLVED, that the date of this Resolution is April 14, 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with Commissioners Hanson, Wells-Harley, Alfandre, and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, April 8, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

ATTACHMENT TWO

Rubin, Carol

From: Sayed Naved [sayednaved@yahoo.com]
Sent: Monday, April 05, 2010 10:14 AM
To: Rubin, Carol; Grayson, Erin
Cc: Conlon, Catherine; Jeff.Zyontz@montgomerycountymd.gov; Nadeem Ahmad; SYED BOKHARI; Uzair Asadullah
Subject: Re: Condition #5, procedure info.
Attachments: Letter-MNCPPC-Chairman.pdf

Good Morning

Attached is ICM's request to the MNCPPC to sever ICM's application from the Consent Agenda. Please let me know if you need anything else. Also, please advise if the presence of ICM's representative is required at the April 8 meeting.

Regards

Sayed Naved
240-383-8019

From: Rubin, Carol
Sent: Thursday, March 25, 2010 5:20 PM
To: Grayson, Erin
Cc: Conlon, Catherine ; sayednaved@yahoo.com ; Jeff.Zyontz@montgomerycountymd.gov
Subject: RE: Condition #5, procedure info.

Erin,

You did a great job of summarizing the options for this Applicant. I have attached a copy of the Board's Rules of Procedure for the Applicant's ease of reference. And I would note that although the Applicant did not have the opportunity during the hearing to comment on the staff recommendation, 1) neither did the community, and 2) the Applicant was offered the opportunity to do so upon return from lunch, but chose not to. Particular attention should be paid to the following Rules:

- Rule 4.13.4: The Applicant may request that a Board member move to have the adoption of the draft Resolution severed from the Consent Agenda. If such a motion is made and passes, another public hearing on the matter will be set. I recommend that this request be made in writing to the Chairman before April 8th.
- Rule 4.12.1: The Applicant can file a written request for the Board to reconsider the Resolution once adopted. Such a request must be filed within 10 days from the date the Resolution is mailed -- in writing to the Planning Director, stating the reasons for the request. Keep in mind that a reconsideration can be granted because of mistake, inadvertence, surprise, fraud, or other good cause.

<<Rules of Procedure.pdf>>

Carol S. Rubin

Associate General Counsel

Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue, Suite 205

Silver Spring, Maryland 20910

tel: 301-495-4646; fax: 301-495-2173

email: carol.rubin@mncppc.org

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From: Grayson, Erin
Sent: Thursday, March 25, 2010 3:49 PM
To: 'sayednaved@yahoo.com'
Cc: Conlon, Catherine; Rubin, Carol
Subject: Condition #5, procedure info.

Hi Sayed,

Please read the condition language below and let me know if you have any concerns with the new condition. I checked on your earlier inquiry with our legal staff about whether you can discuss the conditions of approval in front of the Board before the resolution is adopted. There are 2 options and I will send the legal language regarding these 2 options shortly. In summary, here's what they are:

- (1) once the resolution is placed as an item on the consent agenda, the Applicant can request from any Board member that the item be severed from the agenda for further discussion and, essentially, discussed again in a public hearing (this request should be in writing) or
- (2) following adoption of the resolution by the Planning Board as part of the consent agenda, the Applicant can file a reconsideration request (which is a written request with the Applicant's justification for a new hearing).

We are scheduling the resolution for the April 8th agenda, so you can choose one of the 2 options, or do nothing after the resolution is adopted and proceed to satisfy the conditions of approval and then proceed to record plat.

Condition #5 approved by the Planning Board at the public hearing:

As part of the previously required landscape and lighting plan, the Applicant must develop a plan for screening the eastern and southern property boundaries after consultation with adjacent property owners. The plan must include a minimum planting area 25 feet in width along the eastern and southern property boundaries and must be submitted for review and approval by MNCPPC staff with the record plat application. The submittal must include verification that a meeting occurred.

Revised Condition #5 discussed by our legal staff after the hearing:

As part of the previously required landscape and lighting plan, the Applicant must develop a plan for screening the eastern and southern property boundaries. The plan must include a minimum planting area 25 feet in width along the eastern and southern property boundaries and must be submitted for review to adjacent property owners, and review and approval by MNCPPC staff with the record plat application. The submittal to

MNCPPC staff must include verification that the proposed plan was submitted to adjacent property owners.

Sincerely,

Erin Grayson

(301)-495-4598



In The Name of Allah Most Merciful Most Gracious

Islamic Center of Maryland

19411 Woodfield Road, Gaithersburg, MD 20879
(301) 840-9440 | trustees@icomd.org | www.icomd.org

April 5, 2010

Board of Trustees:

Chair

M. Nadeem Ahmad

Vice-Chair

Abdullah Shamim

Treasurer

Mohammed S. Khan

Secretary

Iqbal Yusuf

Maged Sharaf

Abu Wahid Khan

Sayed M. Naved

To:

Mr. Royce Hanson

Chairman, Montgomery County Planning Board

Maryland-National Park and Planning Commission

8787 Georgia Avenue

Silver Spring, MD 20910

Ref: Case # 12002041B - Approval of the revision to the forest conservation plan with conditions on March 11, 2010.

Dear Mr. Hanson:

On behalf of the Board of Trustees of Islamic Center of Maryland, I am requesting that case # 12002041B – Revision to the forest conservation plan – approved with conditions on March 11, 2010 be severed from the Consent Agenda scheduled for review on April 8, 2010 and be placed as an open agenda for a future public hearing.

On March 11, 2010, due to a mix-up regarding timing of the hearing, the ICM did not get an opportunity to address the concerns raised by the Board. Upon reviewing the tape of the proceedings, it became evident to us that unanswered concerns raised by the Board resulted in extremely unfavorable conditions imposed by the Board. We are confident that when the board is provided with the facts regarding ICM's approved preliminary plan its ruling will be different

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

M. N. Ahmad
Chair, Board of Trustees

Rubin, Carol

From: MCP-Chair
Sent: Monday, April 19, 2010 10:33 AM
To: Rubin, Carol
Subject: FW: Islamic Center of Maryland - Preliminary Plan No. 12002041B - ADOPTION OF MCPB RESOLUTION No. 10-33

Carol,

Can you answer his question? Please let me know how you want to proceed. I can reply to him, or you can, but I need to know what you want me to tell him.

Thanks.

Joanne Hill

Office of the Chairman
Montgomery County Planning Board
301-495-4605
301-495-1320 (fax)
mcp-ctrack@mncppc-mc.org

From: Sayed Naved [mailto:sayednaved@yahoo.com]
Sent: Sunday, April 18, 2010 1:14 PM
To: MCP-Chair
Subject: Re: Islamic Center of Maryland - Preliminary Plan No. 12002041B - ADOPTION OF MCPB RESOLUTION No. 10-33

Thank you for the response. Please advise if a date has been set for the hearing to reconsider our application.
Sincerely

Sayed Naved
Member, ICM Board of Trustees
240-383-8019

From: MCP-Chair
Sent: Wednesday, April 07, 2010 11:19 AM
To: Sayed Naved
Subject: RE: Islamic Center of Maryland - Preliminary Plan No. 12002041B - ADOPTION OF MCPB RESOLUTION No. 10-33

Mr. Naved:

I have attached Chairman Hanson's response to your request. The original will be sent to you via U.S. Mail. If you have questions, please feel free to contact this office. Thank you

Joanne Hill

Office of the Chairman
Montgomery County Planning Board
301-495-4605
301-495-1320 (fax)
mcp-ctrack@mncppc-mc.org

From: Sayed Naved [mailto:sayednaved@yahoo.com]

Sent: Tuesday, April 06, 2010 8:54 AM

To: MCP-Chair

Cc: Nadeem Ahmad; SYED BOKHARI; Uzair Asadullah

Subject: Islamic Center of Maryland - Preliminary Plan No. 12002041B - ADOPTION OF MCPB RESOLUTION No. 10-33

Good Morning Chairman Hanson and Respected Members of the Planning Board

Attached is the request from the Islamic Center of Maryland to sever ICM's application from the Consent Agenda Item 1-A-1 for the April 8, 2010 meeting and be placed as an open agenda for a future Planning Board meeting. The agenda item is listed as follows on the Board's website:

- Islamic Center of Maryland - Preliminary Plan No. 12002041B - ADOPTION OF MCPB RESOLUTION No. 10-33

This item was discussed on March 11, 2010 by the Planning Board but due to a mix-up regarding the timing of the hearing, the ICM representative did not get an opportunity to address the concerns raised by the Board. ICM representatives were present at the meeting on March 11 but were advised by the staff that ICM's item will be discussed by the Board after lunch. We left to get some lunch and it turned out that the Board discussed this item before lunch, in our absence, and we didn't get an opportunity to provide feedback and answer questions. Upon reviewing the taped recording of the proceedings, it became evident to us that unanswered concerns raised by the Board resulted in extremely unfavorable conditions imposed by the Board. We are confident that when the board is provided with the facts regarding ICM's approved preliminary plan its ruling will be different.

Please advise if the presence of ICM's representative is required at the April 8 meeting. Thank You for your consideration. A receipt acknowledgement of this email would be much appreciated.

Sincerely

Sayed Naved
Member, ICM Board of Trustees
240-383-8019

ATTACHMENT THREE



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

OFFICE OF THE CHAIRMAN

April 6, 2010

BY EMAIL: trustees@icomd.org
M. N. Ahmed
Chair, Board of Trustees
Islamic Center of Maryland
19411 Woodfield Road
Gaithersburg, Maryland 20879

Re: Preliminary Plan 12002041B
Islamic Center of Maryland

Dear Mr. Ahmed:

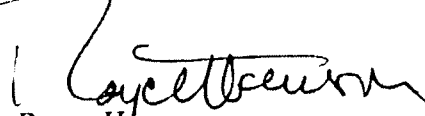
I understand that the Resolution of the Planning Board's vote to approve the referenced Plan with conditions has been set for adoption on the Consent Agenda on April 8, 2010. I received your letter dated April 5, 2010, in which you request that the item be severed from the Consent Agenda in accordance with Board Rule of Procedure 14.13.4¹. You have made this request because, as I understand it, you did not have an opportunity to testify before the Board's formal vote due to a scheduling mix-up.

Rule 4.11.2 indicates that once the Board votes to approve, approve with condition, or disapprove an item, the record of proceedings must be closed. And although Rule 14.13.4 provides that any Board member may move to sever an item from the Consent Agenda so that the Board may either i) act separately on the item, or ii) schedule a public hearing for a later date, the record of the proceeding has been closed. To clarify, the action on the Planning Board's Consent Agenda is to memorialize the action taken by the Board at the public hearing on March 11, 2010. Therefore, the better course of action would be a Petition to Reconsider under Rule 4.12.1. Another hearing on the issues for reconsideration, assuming the Board agrees to such action, would provide the community their opportunity to be heard, as well.

¹ All references to a Rule is to the Planning Board's Rules of Procedure adopted March 2007.

Therefore, since you have already provided your rationale, I will accept your April 5, 2010, letter as a request for reconsideration under Rule 4.12.1. I will also direct staff to forward your letter and this response to all interested parties and upon the mailing of the Resolution; I will set a hearing for the Board to consider your request. If the Board votes to reconsider, we will then set a new hearing to reconsider the application.

Sincerely,



Royce Hanson
Chairman