



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

**APPROVED
MINUTES**

The Montgomery County Planning Board met in regular session on Thursday, March 30, 2017, at 10:33 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 6:15 p.m.

Present were Vice Chair Marye Wells-Harley, and Commissioners Natali Fani-González and Gerald R. Cichy. Chair Casey Anderson joined the meeting at 10:51 a.m. following discussion of Item 2. Commissioner Norman Dreyfuss was necessarily absent.

Items 1 through 3 and Item 5 are reported on the attached agenda.

Item 4 was removed from the Planning Board agenda.

The Board recessed for lunch at 12:30 p.m. and convened in Closed Session at 12:45 p.m. to take up Items 10 and 11, Closed Session Items.

In compliance with State Government Article §3-305(b), Annotated Code of Maryland, the following is a report of the Board's Closed Session:

The Planning Board convened in Closed Session at 12:45 p.m. in the 3rd floor conference room with the Prince George's County Planning Board, as the Maryland-National Capital Park and Planning Commission (Full Commission), via telephone conference. The meeting was closed under authority of Annotated Code of Maryland §3-305(b)(7) and (b)(9), to conduct collective bargaining negotiations or consider matters that relate to the negotiations, and consult with counsel to obtain legal advice.

Also present for the meeting in Montgomery County were Montgomery County Park Police Chief Antonio DeVaul; Montgomery County Parks Department Director Michael Riley; and James Parsons of the Commissioners' Office.

In Closed Session, the Full Commission received briefing and discussed collective bargaining negotiations with the Fraternal Order of Police. An open session report will be included in the Full Commission Meeting Minutes.

The Closed Session meeting was adjourned at 12:55 p.m.

The Planning Board re-convened in Closed Session at 12:58 p.m. in the 3rd floor conference room on motion of Commissioner Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor of

the motion, and Commissioner Dreyfuss absent. The meeting was closed under authority of Annotated Code of Maryland §3-305(b)(13), to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.

Also present for the meeting were Montgomery County Park Police Chief Antonio DeVaul; Montgomery County Parks Department Director Michael Riley; and James Parsons of the Commissioners' Office.

In Closed Session, the Board approved the Closed Session Minutes of February 16 and March 9, 2017.

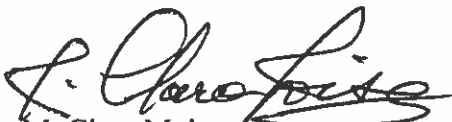
The Closed Session meeting was adjourned at 12:59 p.m.


The Board reconvened in the auditorium at 1:35 p.m.

Items 8 and 9 are reported on the attached agenda.

Items 6 and 7 were removed from the Planning Board agenda.

There being no further business, the meeting was adjourned at 6:15 p.m. The next regular meeting of the Planning Board will be held on Thursday, April 6, 2017, in the Montgomery Regional Office in Silver Spring, Maryland.


M. Clara Moise
Sr. Technical Writer/Editor


James J. Parsons
Sr. Technical Writer/Editor

**Montgomery County Planning Board Meeting
Thursday, March 30, 2017
8787 Georgia Avenue
Silver Spring, MD 20910-3760
301-495-4600**

1. Consent Agenda

***A. Adoption of Resolutions**

1. Randolph Farms Preliminary Plan 120160320 - MCPB No. 17-017

BOARD ACTION

Motion: FANI-GONZÁLEZ/CICHY

Vote:

Yea: 3-0

Nay:

Other: ANDERSON & DREYFUSS ABSENT

Action: Adopted the Resolution cited above, as submitted.

***B. Record Plats**

Subdivision Plat No. 220170380, Edgemoor

R-60 zone, 1 lot; located in the southwest quadrant of the intersection of Edgemoor Lane and Exeter Road; Bethesda - Chevy Chase Master Plan.

Staff Recommendation: Approval

BOARD ACTION

Motion: FANI-GONZÁLEZ/CICHY

Vote:

Yea: 3-0

Nay:

Other: ANDERSON & DREYFUSS ABSENT

Action: Approved staff recommendation for approval of the Record Plat cited above, as submitted.

***C. Other Consent Items**

Approval of an Amendment to Supplementary Declaration of Covenants and Restrictions by the Longmead Crossing Community Services Association, Inc.

BOARD ACTION

Motion: FANI-GONZÁLEZ/CICHY

Vote:

Yea: 3-0

Nay:

Other: ANDERSON & DREYFUSS ABSENT

Action: Approved staff recommendation for approval of the Supplementary Declaration of Covenants and Restrictions Amendment cited above.

***D. Approval of Minutes**

Planning Board Meeting Minutes of March 16, 2017

BOARD ACTION

Motion: FANI-GONZÁLEZ/CICHY

Vote:

Yea: 3-0

Nay:

Other: ANDERSON & DREYFUSS ABSENT

Action: Approved Planning Board Meeting Minutes of March 16, 2017, as submitted.

2. Roundtable Discussion

- Planning Director's Report

BOARD ACTION**Motion:****Vote:****Yea:****Nay:****Other:****Action: Received briefing.**

Planning Department Director's Report – Planning Department Director Gwen Wright briefed the Board on the following ongoing and upcoming Planning Department events and activities: the status of the Bethesda Downtown Sector Plan with the County Council Planning, Housing, and Economic Development Committee worksessions completed, a full Council discussion scheduled for April 18, and full Council worksessions pending; the status of the Greater Lyttonsville Sector Plan, with the approved and adopted Resolution to be presented to the Board on April 6, and to the Full Commission at the April meeting; the status of the Rock Spring Master Plan, with a Planning Board worksession and vote-out scheduled for today, and a Council public hearing scheduled for the summer; the status of the White Flint 2 Sector Plan, with Planning Board worksessions scheduled through May, and transmittal to the Council scheduled for June; the status of the MARC Rail Communities Plan and the Grosvenor/Strathmore Metro Area Minor Master Plan, with the presentation of the Working Drafts for the Plans and Planning Board public hearings pending; the status of the Veirs Mill Corridor Master Plan, with a second community meeting held on March 29; the status of ongoing studies, including the Local Area Transportation Review Guidelines, which will be presented to the Board on April 20, Master Plan Reality Check, which will be presented to the Board in April, the Rental Housing Study, which will be presented to the Board in the spring, the Retail Trends Study, which will be presented to Board in the summer, Employment Trends Study, the Small Market Senior Housing Study, and the Colocation Study, with a Directors Oversight Committee meeting held on March 29; the ongoing Urban Land Institute training sessions for staff; an upcoming workshop hosted by economic consultant Sarah Woodworth on real estate strategies utilized in other jurisdictions, scheduled for April 6; the International Lunch potluck event scheduled for April 5; and the presentation of the 2017 Semi-Annual Report to the County Council scheduled for April 4.

There followed a brief Board discussion with questions to Ms. Wright.

***3. North Glen Hills, Preliminary Plan No. 11998050A** --- Amendment to a Preliminary Plan for Forest Conservation Plan Purposes. A request to remove a Category II Conservation Easement located at 12925 Circle Drive, Potomac, in the RE-1 Zone, Potomac Sub-Region Master Plan 2002.

Staff Recommendation: Approval with Conditions and Adoption of Resolution

BOARD ACTION

Motion: FANI-GONZÁLEZ/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other: DREYFUSS ABSENT

Action: Approved staff recommendation for approval of the Preliminary Plan Amendment cited above, subject to conditions, as stated in the attached adopted Resolution.

Planning Department staff offered a multi-media presentation and discussed a proposed Preliminary Plan Amendment to remove an existing Conservation Easement, revise the limits of disturbance (LOD), demolish two existing structures, and rebuild a single-family detached residential structure. The 1.15-acre property, a flag-lot identified as Lot 21, Block 7, is located on the north side of Circle Drive, and is zoned Rural Estate in the Potomac Subregion Master Plan area. A segment of the pipestem portion of the property is located within the Piney Branch Special Protection Area. The site is currently developed with a one-story single-family detached residential structure and a separate outbuilding. The property is mostly open area with a scattering of trees along the property lines.

According to staff, the current Preliminary Plan, which was approved in 1998, created not only the property that is the subject of this application, but also the adjacent Lot 20, Block 7. The associated Final Forest Conservation Plan (FFCP) placed 0.54 acres of reforestation and 0.26 acres of forest protection within Category I Conservation Easements. The FFCP also included language that specified protecting an existing 59-inch diameter at breast height (DBH) white ash tree, identified as Tree 44, with a Category II Conservation Easement containing 12,496 square feet of critical root zone. Staff noted that a second tree, a 33-inch DBH white ash tree identified as Tree 43 located near Tree 44, may have been included in this easement. However, tree 43 is not mentioned on the record plat or the FFCP, and was removed some time ago by a previous owner. In August 2016, permission to remove Tree 44, now 65 inches DBH, was granted due to extensive damage to the tree due in part to emerald ash borer infestation. The removal of the tree will be mitigated with the planting of five trees onsite. Because the original purpose for the placement of the Category II Conservation Easement was to protect the two specimen trees and not to protect sensitive environmental features such as existing forest or wetlands, and because

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***3. North Glen Hills, Preliminary Plan No. 11998050A**CONTINUED

those two trees no longer exist, the applicant is requesting to update the FFCP to show the removal of the easement, the removal of Tree 44, and the replacement plantings. The applicant proposes to retain the existing Category I Conservation Easements and to mitigate the removal of the 12,496 square feet of Category II Conservation Easement by purchasing forest bank credits in an off-site forest bank at a 2:1 ratio. The applicant has also submitted a variance request to remove one tree, which is located in the septic reserve area and determined to be in poor health, and impact two others. As mitigation, the applicant will plant three trees onsite. Staff supports the variance request.

In addition to the removal of the Category II Conservation Easement, the applicant also proposes to demolish the existing one-story single-family residential structure and separate outbuilding, and construct a new single-family detached home. The LOD on the property will also be revised to allow for construction of a single-family residence, a portion of a new driveway, and a new septic system. Staff then noted a minor correction to Condition 2d regarding the amount of required offsite forest planting.

Mr. Jake Schaller, attorney representing the applicant, offered comments and concurred with the staff recommendation.

Ms. Susan Lee representing the West Montgomery County Citizens Association, and Ms. Sherry Marshall of Circle Drive offered testimony.

Mr. Jeff Robertson, member of the applicant's team, also offered comments.

There followed extensive Board discussion with questions to staff and some of the speakers, during which the Board recommended that the accompanying Resolution be revised to reflect that for hardship to be determined as unwarranted in regard to Forest Conservation Law, it requires not only the examination of the extent of the hardship to the property owner, but also the benefit of the preservation of the tree or trees in question.

Legal staff noted that the accompanying Resolution would be modified to reflect the revision and submitted for adoption at a later date.

~~4. Update on Proposed FY18 Operating Budget – County Executive Recommendation~~

REMOVED

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: **This Item was removed from the Planning Board agenda.**

5. Rock Spring Master Plan - Worksession #7

Staff Recommendation: Review and approve the Planning Board Draft of the Rock Spring Master Plan

BOARD ACTION

Motion: WELLS-HARLEY/CICHY

Vote:

Yea: 4-0

Nay:

Other: DREYFUSS ABSENT

Action: Approved staff recommendation for approval of the Planning Board Draft of the Rock Spring Master Plan.

Planning Department staff offered a multi-media presentation and discussed the Planning Board Draft of the proposed Rock Spring Master Plan. At the March 16 worksession, the Planning Board reviewed edits to the Plan that reflect the Board's decisions and direction to staff throughout the worksessions. During the March 16 worksession, the Board supported a proposed Zoning Text Amendment (ZTA) to modify the Regional Shopping Center Overlay Zone to clarify that residential uses are allowed, and to allow additional height to accommodate multi-family buildings. The proposed ZTA is also supported by the owners of Westfield Montgomery Mall. During that same worksession, Chair Anderson recommended that the ZTA also include language that discourages the continuation of the standard shopping mall design, which does not address street frontages, relate to surrounding uses, or promote pedestrian connectivity. A finalized version of that ZTA will be presented to the Board at a later date. The Planning Board Draft contains all the changes discussed during the previous worksessions, including the requested updates to graphics. In addition to some revisions to language, other modifications include the addition of more place names to the Rock Spring Context map; an additional table showing Existing and Estimated Potential Development; a modification to the "Design Guidelines: Buildings" section; a revision to the three cluster area proposed zoning maps to match numbering on the overall Proposed Zoning map, with the addition of an aerial map with place names next to each zoning map; the addition of a Carbon Footprint Analysis; the addition of a section denoting the Park Recreation Open Space hierarchy; the removal of site-specific language regarding school locations; and the addition of a Road Code Design standard table to the "Roadway Classifications" section.

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5. Rock Spring Master Plan - Worksession #7CONTINUED

Following approval and transmittal to the County Council and Executive, the next steps for the Plan include a County Council Public Hearing, tentatively scheduled for May, County Council worksessions scheduled throughout the summer, and adoption of the Plan and a Sectional Map Amendment scheduled for fall.

Mr. Steve Robins, attorney from Learch, Early, and Brewer, offered testimony.

There followed extensive Board discussion with questions to staff, during which the Board recommended modified language that clearly states that every site within the Plan area being developed under the optional method should be evaluated as a potential school site and for park and open space facilities accommodation; that removes limitations on school types to be constructed in the Plan area, and instead allows the construction of a large school facility; that clarifies that density transfers for all properties within the Plan area may be appropriate to accommodate additional flexibility and development potential; and that states that the decision to classify a road as either private or public should be made at the time of re-development.

10. CLOSED SESSION – Teleconference Meeting of the Maryland-National Capital Park and Planning Commission (Full Commission)

Pursuant to Section 3-305(b)(7) and (b)(9) of the General Provisions Article of the Annotated Code of Maryland, a closed session is proposed to consult with counsel to obtain legal advice, and to conduct collective bargaining negotiations or consider matters that relate to the negotiations.

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See State citation and open session report in narrative Meeting Minutes of the Maryland-National Capital Park and Planning Commission.

11. CLOSED SESSION

According to MD ANN Code, General Provisions Article, §3-305(b)(13), to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.

The topic to be discussed is the Approval of Closed Session Minutes

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

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

~~6. White Flint 2 Worksession No. 6: Transportation~~

~~Staff Recommendation: Discussion and provide direction to staff~~—REMOVED

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: **This Item was removed from the Planning Board agenda.**

~~7. Approved Greater Lyttonsville Sector Plan—Montgomery County Planning Board
Resolution of Adoption~~

~~Staff Recommendation: Approve Resolution and Transmit to Full Commission—REMOVED~~

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: **This Item was removed from the Planning Board agenda.**

***8. Lot 31/31A, Site Plan Amendment No. 82007018C in response to a violation --- CR 2.75 C 0.5 R 2.5 H 55T Zone, 3.07 acres, Request to remove a note limiting the area within the public right-of-way that may be used for restaurant seating; located directly south of the intersection with Bethesda Avenue and Woodmont Avenue; Bethesda CBD Sector Plan.**

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: CICHY/FANI-GONZÁLEZ

Vote:

Yea: 4-0

Nay:

Other: DREYFUSS ABSENT

Action: Approved staff recommendation for approval, subject to revised conditions, discussed at the meeting, and as stated in the attached adopted Resolution.

Planning Department staff offered a multi-media presentation and discussed a Site Plan Amendment request to remove a note limiting the area within the public right-of-way that may be used for restaurant seating on a 3.07-acre lot, i.e. Lot 31/31A, located directly south of the intersection with Bethesda Avenue and Woodmont Avenue in the Bethesda Central Business District Sector Plan area. Staff noted that the surrounding area includes mixed commercial, office, and residential development to the west, east, and north of the site. Staff also noted that a permit was cancelled for this request because the applicant did not follow the Department of Permitting Services (DPS) regulations. Staff noted that this request was submitted in response to a violation of the Certified Site Plan for outdoor restaurant seating outside of the area designated on the Plan and within the pedestrian area of the sidewalk. The main focus of the proposed amendment is the sidewalk along the west side of Woodmont Avenue, outside of the Silver restaurant. Staff received complaints that the sidewalks on Woodmont Avenue in front of the restaurant were too narrow and were impeding pedestrian traffic and creating an unsafe and undesirable condition. DPS conducted an inspection and on May 9, 2016, issued the applicant a Notice of Non-Compliance with the Certified Site Plan. Planning Department staff issued the applicant an Administrative Citation for continued violation of the Certified Site Plan on September 16, 2016. Staff added that the applicant has since removed the non-compliant elements and the violation has been addressed.

Staff determined that a clear pedestrian path of six feet, with service on both sides, was too narrow to properly balance the public needs of reasonably unimpeded pedestrian traffic and the private needs of servicing the restaurant's outdoor seating area. After discussion with staff, the applicant submitted an updated design. The revised proposal provides a minimum free-and-clear pedestrian path of 10 feet along the outside approximately two-thirds of the restaurant

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***8. Lot 31/31A, Site Plan Amendment No. 82007018C in response to a violation**

CONTINUED

façade, reduced to 7 feet four inches for the remaining third near the main entrance. Grading limitation in the transition area between the adjacent loading dock and the sidewalk in front of the restaurant also limit pedestrian movement. The proposed amendment also envisaged the removal of two street trees located immediately to the north of the adjacent loading dock on the west side of Woodmont Avenue.

Mr. Bob Dalrymple, attorney representing the applicant, Mr. Robert Giaimo owner of the Silver restaurant, also present, introduced Ms. Jane Mchaffie, member of the applicant's team, discussed the proposed amendment request and concurred with the staff recommendation.

Mr. Robert Giaimo offered brief comments.

Ms. Amanda Farber of Kentucky Avenue offered testimony.

At the Board's request, Mr. Ehsan Motazedí of the Department of Permitting Services offered comments and answered questions from the Board.

There followed extensive Board discussion with questions to staff, Mr. Dalrymple and Mr. Giaimo.

Chair Anderson stated support for the amendment with a 7-foot sidewalk clearance for pedestrians instead of the required 10 feet in order to save the two existing street trees, and in keeping with the county's and the Master Plan's push for more tree canopy in downtown Bethesda.

***9. RCGG Jesus House, Preliminary Plan No. 120160040** --- Request to create one (1) lot from three (3) un-platted parcels for a 1600-seat religious assembly and a 350-student private school; located along the west side of New Hampshire Avenue/MD 650 approximately 0.15 miles south of the New Hampshire Avenue/MD 650 and Spencerville Road/MD 198 intersection; 15.55 acres; RE-2 zone; 1997 Cloverly Master Plan.

Staff Recommendation: Approval with Conditions and Adoption of Resolution

BOARD ACTION

Motion: FANI-GONZÁLEZ/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other: DREYFUSS ABSENT

Action: Approved staff recommendation for approval of the Preliminary Plan request, subject to conditions discussed at the meeting, and adopted the attached Resolution.

Planning Department staff offered a multi-media presentation and discussed a Preliminary Plan application request to create one lot from three un-platted parcels for a 1600-seat church and a 350-student private school on a 15.55-acre property located along the west side of New Hampshire Avenue (MD650), approximately 0.15 miles south of the intersection of MD650 and Spencerville Road (MD198) in the Cloverly Master Plan area. The property is currently improved with a detached single-family residential structure, several sheds, and two driveways accessing New Hampshire Avenue/MD650. The property is located in the Northwest Branch Watershed and contains 10 acres of forest, as well as numerous large trees located in the northeastern corner of the property and along the property boundaries. An existing Category I Conservation Easement abuts the property on the north side. There are no streams, wetlands, or rare or endangered species on or immediately adjacent to the property. Staff noted that a sewer category change was approved by the County Council in 1999 and requires that the area of forest, which would have been removed for a septic system, must be preserved. Staff noted that Montgomery County Department of Environmental Protection (MCDEP) staff agreed with Planning staff that no specific acreage of forest preservation was required by the conditions of the sewer category change other than that which would have been removed to accommodate a septic system and reserve area for a religious institution to be built on the property. To confirm compliance with the County Council resolution, staff and MCDEP required the applicant to submit wastewater calculations for the church and the school proposed under this application to determine how much area would be required for a septic system to service the highest daily wastewater generator.

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***9. RCCG Jesus House, Preliminary Plan No. 120160040**CONTINUED

Staff added that the proposed application substantially meets the recommendations of the 1997 Cloverly Master Plan, the most significant of which recommends that as a goal, the impervious surface level of sub-watersheds in this area be limited to 10 to 15 percent. The Master Plan does recommend how this is to be done other than by discouraging individual development with high site imperviousness. Rather than implement a strict development by development limit of 15 percent imperviousness, staff demonstrates that while the impervious level of this application is above 15 percent, this application continues to maintain a sub-watershed impervious level below 15, as recommended in the Master Plan. Staff also noted that the applicant proposes to further reduce the impervious area by constructing underground parking and adding solar panels on the roofs of the church and the school.

Staff has worked with the applicant to address the community's concerns by holding many meetings and scheduling additional meetings with anyone who requested one and by monitoring the meetings of the East County Citizens Advisory Board which has met on three occasions to discuss this application. Staff concluded that the property is suitable for the proposed use, that the application is in substantial conformance with the Master Plan recommendations, and that the property can be served with adequate public facilities and complies with Chapter 22A of the Forest Conservation Law. Staff also discussed the conditions of approval.

The following speakers offered testimony: Ms. Shana Schwartzberg of Bryants Nursery Road; Ms. Jan DeGilio of Pebblestone Drive and President of the Stonegate Citizens Association; Mr. Richard Wells of McNeil Lane; Ms. Patricia Thomas of Holly Grove Road; Ms. Maria Friedman of Jaystone Place; Ms. Kathy Hastings of Soapstone Lane; Mr. Richard Meyers of Peachwood Drive and representing the Peachwood Civic Association; Ms. Sally Rose of Notley Road and speaking on behalf of Ms. Sara Watson; Ms. Ellen Mann of Mayflower Drive and representing the Good Hope Estates Citizens Association; Mr. Zerxes Spencer of Bryants Nursery Road; Ms. Michele Albornoz of Snider Lane; Ms. Renee Chen of Windmill Lane and President of the Peachwood Estates Homeowners Association; Ms. Mitra Pedoeem of Bryants Nursery Road and representing three adjacent property owners; Mr. David Gardner, attorney representing Mr. Michael Grodin, owner of the adjoining property; Mr. Dick Wittmeir, land surveyor; Mr. Quentin Remein of Bryants Nursery Road and representing the Cloverly Civic Association; and Ms. Rebecca Doherty representing the Community-Centered Organizations partnered with RCCG Jesus House DC.

Ms. Erin Girard, attorney representing the applicants, Mr. Chinyere Olujide, Associate Pastor, and Ms. Bimbo Fasosin, Church Administrator for RCCG Jesus House DC, also present, introduced Mr. Mike Razavi of Raztec Associates, Inc. and member of the applicant's team, discussed the proposed request, and concurred with the staff recommendation.

At the Board's request, legal staff noted that MCDEP and the Department of Permitting Services (DPS) staff have reviewed and approved the proposed Preliminary Plan, and the Board does not have a legitimate reason to deny the application. Counsel also added that the sewer and water category change was approved by the County Council and cannot be reversed.

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***9. RCGG Jesus House, Preliminary Plan No. 120160040**

CONTINUED

At the Board's request, Mr. Alan Soukup of MCDEP, and Mr. Jason Flemming of DPS offered comments and answered questions from the Board.

Mr. Chinyere Olujide, the applicant, also offered comments and answered questions from the Board.

There followed extensive Board discussion with questions to staff, Legal counsel, and the applicant's representative.

Chair Anderson stated that the Board is not in a position to deny the Preliminary Plan request as submitted by the applicant even though the Board feels that the proposed project is too big for the area and too much of the existing forest will be destroyed.

Commissioner Fani-Gonzalez added that even though she would have preferred to see a smaller church on the site, the Board, as previously stated by Chair Anderson and confirmed by legal staff, does not have a legitimate reason to deny the application.