

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Montgomery County – Wheaton Headquarters
2425 Reddie Drive, 14th Floor
Wheaton, Maryland 20902
MontgomeryPlanningBoard.org

February 4, 2022

M E M O R A N D U M

TO: Montgomery County Council

FROM: Casey Anderson, Chair Montgomery County Planning Board

RE: Planning Board and Department Procedures

In response to your request regarding recent information being distributed in social media, this memo explains the relevant Planning Board procedures and describes our actions to upgrade these protocols to improve transparency and further facilitate community involvement. We take openness and transparency very seriously, and whenever gaps or shortcomings are identified we do not hesitate to make improvements. The items for which you have requested specific comment include:

- 1) Lobbying disclosure requirements;
- 2) Meetings of the Development Review Committee (“DRC”); and
- 3) The Planning Board’s consent agenda

Lobbying Disclosure

Short Answer: For the past 39 years Maryland law has called for M-NCPPC to maintain a lobbying registration system, but the law’s provisions have never been fully implemented. This may be partly because existing state and county lobbying registration systems require disclosure of similar information and partly because anyone who appears before the Planning Board is asked to identify any organization or company they represent. Nonetheless, M-NCPPC has adopted an updated lobbying disclosure policy that will require formal registration and reporting for lobbying on certain land use activities not covered by our previous lobbying disclosure policy, such as master plans, sectional map amendments, zoning text amendments and subdivision regulation amendments. Quasi-judicial matters, often described as “regulatory” matters, are not included because they are covered by *ex parte* rules that prohibit communication with Planning Board members outside of formal hearings.

Detailed Explanation: The Planning Board is covered under the Maryland Public Ethics Law, General Provisions Article, Title 5, Subtitle 8, Part IV. This law calls for M-NCPPC to have a Lobbying Disclosure

Policy that is substantially similar to the provisions in Subtitle 7 of the statute, which requires lobbyists to register when they are being compensated to influence legislative or executive action and are compensated \$5,000 or more, or spend \$100 or more on gifts for officials, among other actions. The recently updated M-NCPPC Lobbying Disclosure Policy No. 5-61 (copy attached) goes beyond the state law's provisions in that it requires lobbyists to register if they are compensated \$2,500 or more to influence administrative, legislative, quasi-legislative, or executive actions of the Commission. Anyone paid \$1,000 or more to solicit others to communicate with officials to influence any Commission action also must register. M-NCPPC's previous Lobbying Disclosure required registration only for lobbying on actions related to the "preparation and adoption of rules and regulations to direct the Commission, the Planning Boards, and the Merit System Board," which did not include major land use policy actions

The Lobbying Disclosure process is also being updated to allow lobbyists to register and report their activities online. Disclosure requirements will apply to advocacy on all legislative and quasi-legislative actions, including master plans, sector plans, functional plans, zoning text amendments, subdivision regulation amendments, and sectional and district map amendments. Lobbying on administrative activities such as enactment of rules, regulations, or bylaws of the Planning Board or Commission also will be covered, along with executive activities such as authorization of grants and procurement awards.

The Planning Board's quasi-judicial activities, which are subject to the *ex parte* rules and for which lobbying is prohibited, are not included as part of the Lobbying Disclosure Policy. These activities include matters that must be decided "on the record" such as site plans, preliminary plans of subdivision, and sketch plans. The conflict of interest regulations and gift reporting rules, in addition to *ex parte* rules, provide protections consistent with the requirements of other quasi-judicial and judicial bodies. The Office of Zoning and Administrative Hearings takes a similar approach.

II. Open Meetings Act Compliance of the DRC

Short Answer: Development Review Committee (DRC) meetings are not Planning Board meetings and Planning Board members are prohibited by the *ex parte* rules from attending or participating in them. These meetings, which include staff from the Planning Department staff and other government agencies, have always been open to the public. The Planning Department now live-streams DRC meetings and maintains video recordings so the public can watch in real time (without the need to sign into an online videoconference) or on demand. The recordings also include closed captioning for increased accessibility.

Detailed Explanation: The Open Meetings Act, Title 3 of the General Provisions Article, applies to certain government bodies when they meet to transact public business. A complaint was filed regarding the DRC, a non-voting group of staff personnel from various county and state agencies. This group meets to discuss recommendations that are ultimately sent to the Planning Board for consideration in making decisions on development applications. Prior to the COVID-19 pandemic, these meetings were held in the Planning Department's conference room. Applicants attend these meetings to discuss technical issues with their applications as raised by staff. The public is welcome to attend and observe.

The Open Meetings Compliance Board found that DRC meeting notices should include a videoconference link so members of the public could more readily access these meetings. The Planning Department has responded to the Compliance Board's finding by offering live-streamed and video-recorded access so that the public can easily watch without the need to log into a videoconference. The complaint- that led to the Compliance Board's finding also alleged that DRC agendas and notices from past meetings were not easily accessible from past meetings, but this claim was rejected. In addition, while the DRC does not produce official minutes, the comments and recommendations of the agencies involved with DRC are available as part of Planning Staff Reports or individually provided on the Planning Department's Development Activity Information Center ("DAIC") website, and the availability of livestreaming and recorded video of each meeting makes their full content readily accessible.

III. Consent Agenda of the Planning Board

Short Answer: The Planning Board's "consent" agenda is used for the handling of non-controversial regulatory items. Items considered by consent meet relevant legal requirements for public hearings because the consent agenda provides interested parties with notice of the matters to be decided and an opportunity to testify and present evidence. The current Rules of Procedure, which are the "hearing procedures" to be followed for original and amended applications, provide that an amendment can be approved on the consent agenda if "supported by Planning Staff and not opposed by any Party" (R.4.13.1). However, the Planning Board is proposing new Rules of Procedure that will create two categories of consent agenda items: (1) "summary" hearings on regulatory items where no opposition is expected, but for which members of the public can request the opportunity to testify by signing up on the Planning Board's web site to speak. If no one signs up to testify or requests removal of the item from the consent agenda, it will be handled as a summary hearing based on the written record.

Detailed Explanation: The Planning Board, like most administrative and legislative bodies, uses its consent agenda to handle non-controversial or ministerial matters that do not require oral presentations or extended discussion. The consent agenda is part of the Planning Board's regular meeting schedule and includes items such as adoption of minutes, resolutions and extensions, and duly noticed regulatory items that have no known opposition. An item can be removed from the consent agenda at the request of any person who wants to testify, whereupon it is placed on the regular agenda for full discussion. Notices concerning regulatory matters explain that anyone who wants to testify simply has to make a request (see below).

Consent hearings are, in fact, public hearings, and they satisfy the elements of due process. These elements include notice to the public of the issues to be decided; the opportunity to be heard by presenting testimony and evidence; the creation of a record; the opportunity for reasonable cross-examination; and a decision based on the appropriate legal rules. The placement of an item on the consent agenda is part of satisfying the notice requirements of due process. Anyone who wants to testify, present evidence, or cross-examine witnesses can remove the item from the consent calendar on request, which satisfies the other elements. Consequently, approval on the consent agenda meets the public hearing requirements of the zoning ordinance, subdivision regulations, and forest conservation law.

In order to clarify and simplify the process for removing a regulatory item from the consent agenda, the Planning Board is proposing new Rules of Procedure and modifying the “Sign Up to Testify” page on its website to make it easier to navigate the process for submitting or providing testimony on consent items. Regulatory matters are placed on the consent agenda only if no member of the public has registered opposition after appropriate notice by mail and/or physically posting has been provided and the item has been placed on the Planning Board’s agenda web page. If the Planning staff has any reason to expect that the item will be controversial it is not placed on the consent agenda. Under the new rules of procedure, the Planning Board’s agenda will be divided into two parts: “procedural matters” and “summary hearing matters.” The [“Sign Up to Testify” webpage](#) will include a link allowing members of the public to register to speak on summary hearing matters, automatically triggering removal from the consent agenda.

PUBLIC NOTICE

PLANNING BOARD HEARING

On **January 21, 2021**, the Montgomery County Planning Board is scheduled to act on the following plan amendment as part of its Consent Agenda at 2425 Reedie Drive, Wheaton, Maryland on the following development plan:

Name of Plan: Poplar Grove
Preliminary Plan Amendment Number: 12019004A
Site Plan Amendment Number: 82019006A
Zoning: CR-2.0; C-1.75; R-1.0; H-145T and
Germantown Transit Mixed-Use Overlay Zone
Property Size 27.15 and 11.40 acres
Master Plan: Germantown West Policy Area and 2009 Germantown
Employment Area Sector Plan

Proposed Use: Request to amend conditions of approval no. 2 and no. 4 to update the phased APF validity period as modified by County Council legislation and request to amend condition of approval no. 26 to clarify allowed earthwork activities for interim uses; Request to amend condition of approval no. 15 to clarify allowed earthwork activities for interim uses prior to obtaining site plan approval and entering into a Site Plan Surety and Maintenance Agreement; on the east side of Century Boulevard between Father Hurley Boulevard and the future Dorsey Mill Road.

To review a written report by planners regarding the development plan, go to our website at montgomeryplanningboard.org/agendas/. Any person may submit a written request to the Planning Board to remove this item from the Consent Agenda and request a full hearing. You may also sign up to testify by calling 301.495.4605. The public can still participate in the Planning Board hearing online at www.montgomeryplanningboard.org while our building is closed, and our daily work operations are still in effect.

For more information or to comment on the development plans, please contact Jeffery Server, the Preliminary and Site Plan amendment reviewer, via email at Jeffrey.Server@montgomeryplanning.org, or by phone at 301.495.4513.

Thank you for your interest in Montgomery County’s future development.

The Maryland-National Capital Park and Planning Commission encourages the participation of individuals with disabilities in its programs and facilities. For support in using facilities, staff support or adaptive equipment, contact the Planning Department ADA Coordinator. Provide requests one week in advance of event: Christine.McGrew@montgomeryplanning.org | (301) 495-1324 | 301-495-1331 (TTY) | 7-1-1 or 800-552-7724 (MD Relay)

