



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

DATE: October 28, 2010

TO: Sandra Youla, Urban Design and Historic Preservation Division

VIA: Dan Hardy, Chief *DKH*
Transportation Planning Division

FROM: Larry Cole, Transportation Planning Division *LC*

SUBJECT: Public Hearing Draft Amendment to the Master Plan of Historic Preservation: Upper Patuxent Resources

Transportation Planning staff has reviewed the *Public Hearing Draft Amendment to the Master Plan of Historic Preservation: Upper Patuxent Resources* approved by the Historic Preservation Commission and recommends that the Planning Board make some modifications to the Public Hearing Draft plan to reflect the recommendations of the current Master Plan of Highways.

To balance the goals of both Master Plans, the following methodology was used to adjust the proposed environmental settings for candidates for historic designation in the Upper Patuxent area as reflected in the staff packet for the November 4 worksession:

Historic Districts

- For historic districts that include historic properties on both sides of a public road, the environmental setting should include any right-of-way recommended by the Master Plan of Highways.
- For historic districts where historic properties on the perimeter abut a Rustic or Exceptional Rustic Road, or a road candidate being considered by the Rustic Roads Advisory Committee (RRAC), the environmental setting should not exclude the right-of-way recommended by the Master Plan of Highways. Since the objective of both the road classification and the historic designation is preservation of the existing condition, inclusion of the road in the historic setting would be more effective since it provides the greater protection.

- For historic districts where historic properties on the perimeter abut any other road, the environmental setting should generally exclude any right-of-way recommended by the Master Plan of Highways. But this should be decided on a case by case basis, depending on the number of contributing buildings and their proximity to the road and on the classification of the road, with higher classification roads given a higher priority than lower classification roads.

Individual Historic Properties

- For individual historic properties, the environmental setting should generally exclude any Master Plan of Highways right-of-way, with the following exceptions:
 - For properties that abut a Rustic or Exceptional Rustic Road, or a road candidate being considered by the RRAC, the Master Plan of Highways right-of-way should not be excluded from the environmental setting, for the reasons stated above.
 - For properties where any right-of-way recommended by the Master Plan of Highways would extend through or be very close to contributing buildings on a historic property, the environmental setting may include a portion of the Master Plan of Highways right-of-way to maintain an adequate buffer from the roadway for these buildings.
 - For dedicated public roads that are not in the Master Plan of Highways, and therefore only part of the local network of streets, the additional right-of-way needed to meet the default minimum per the road's classification in the County's Road Code should generally not be excluded from the environmental setting.
 - For roads with prescriptive rights-of-way (see discussion below), the decision on whether to include or exclude the Master Plan right-of-way in the environmental setting should be based on classification, as noted above. If a road with a prescriptive right-of-way is not in the Master Plan of Highways, the prescriptive right-of-way should generally not be excluded from the environmental setting.
 - Where there are individual historic properties on both sides of a road, any right-of-way recommended by the Master Plan of Highways should generally not be excluded from the environmental setting.

Prescriptive Rights-of-Way

Many old roads in the rural part of the county have no dedicated right-of-way, but they are deemed to be public roads by virtue of their use over at least a twenty-year period. While there has been no legal instrument to effect the easement on private property, prescriptive rights-of-way are shown for these roads on Montgomery County's tax maps.

We understand that the County Attorney considers that the prescriptive right-of-way is the actual width of the roadway itself. Within this prescriptive right-of-way, the County has the right to perform normal road maintenance.

Public right-of-way is acquired through dedication, which is normally done through the subdivision process, or by acquisition by the State or County for the purpose of a capital road project. On many of the old roads in the rural part of the county, neither of these events has occurred so no platted public right-of-way exists.

Placement of a property on the Master Plan of Historic Resources would not affect the ability of the public to use the prescriptive right-of-way nor the ability of the State or County to maintain the road.