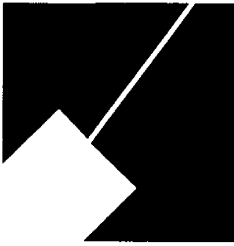


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Agenda Date: May 18, 2006
Reconsideration Request
Item: 10

**OFFICE OF
THE GENERAL COUNSEL**

(301) 495-4646
FAX (301) 495-2173

May 12, 2006

REQUEST FOR RECONSIDERATION

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Debra Yerg Daniel, Associate General Counsel *DYD*
301.495.4646

RE: Reconsideration Request for Reserve at Fairhill
Preliminary Plan No. 1-04110

I. BACKGROUND

Party Seeking Reconsideration:

David Troutner

Action Sought To Be Reconsidered:

Preliminary Plan No. 1-04110

Date of Hearing: March 31, 2005

Action Taken: Approval of Preliminary Plan

Planning Board Vote:

Motion to approve Preliminary Plan made by Commissioner Bryant, seconded by Commissioner Wellington.

Chairman Berlage and Commissioners Bryant, Wellington, and Robinson voting in favor of the motion. Commissioner Perdue was absent.

Procedural Background

The Preliminary Plan involves a proposal from Rogers Consulting and Pulte Homes ("Applicant") to create a residential community of 133 dwelling units (113 one-family detached dwelling units and 20 one-family duplex units) on 334 acres of land located at both sides of Wickham Road south of MD 108 in the Upper Rock Creek master plan area ("Subject Property").

This Preliminary Plan was heard by the Planning Board on March 31, 2005. At that hearing, the Planning Board approved the Preliminary Plan with conditions. The Planning Board's opinion was issued on December 20, 2005, and is attached here to as Attachment One. On January 5, 2006, more than 10 days from the issuance of the Planning Board's opinion, the Planning Board received a request for reconsideration from David Troutner.

On January 13, 2006, Mr. Troutner filed a petition for judicial review of the Planning Board's decision in this case to the Montgomery County Circuit Court. By Order dated April 21, 2006, the Montgomery County Circuit Court remanded this matter back to the Planning Board for consideration of Mr. Troutner's reconsideration request. The Order requires that this request be presented to the Planning Board no later than May 21, 2006.

Request For Reconsideration:

By e-mail dated January 5, 2006, Mr. Troutner requests reconsideration of the Planning Board's approval of the Preliminary Plan. This e-mail is attached hereto as Attachment Two. Mr. Troutner is requesting that the Planning Board reconsider its decision to require an easement or covenant over the rural open space portion of the Subject Property to be dedicated as parkland. Mr. Troutner, in his request, questions the ability of the Commission to "ensure that land dedicated and conveyed to it as parkland will never be subdivided and/or further developed" ¹ In addition, Mr. Troutner takes issue with staff's position that such an easement or covenant is not required by law.

Mr. Troutner, in his request, indicated that he did not receive a copy of the Planning Board's opinion until December 31, 2005. Presumably, this serves as his basis for just cause to waive the 10-day limitation for filing a reconsideration request.

Opposition to Request for Reconsideration

The Planning Board received on May 12, 2006, a letter from the Applicant, through its counsel, in opposition to Mr. Troutner's request for reconsideration. This letter is attached hereto as Attachment Three. In its letter, the Applicant the argues that 1) the reconsideration request was not timely made and, therefore, not properly before the Board; and 2) that the reconsideration request is not based on sufficient grounds since it "involves an issue that was reviewed by Planning Staff and the Planning Board

¹ Attachment Two, p.1.

at the public hearing on the Preliminary Plan and was addressed in the Preliminary Plan Opinion.”²

Zoning Text Amendment 06-04

At the time the Planning Board approved this Preliminary Plan, the Zoning Ordinance did not require an easement or covenant over rural open space to be dedicated as parkland in connection with an optional method development. Since the Planning Board’s approval, the Council has adopted ZTA 06-04 that now requires an easement or covenant over rural open space whether it is privately or publicly held. ZTA 06-04, attached hereto as Attachment Four, became effective May 8, 2006. Thus, if the Planning Board decides to reconsider this Preliminary Plan, the easement or covenant requested by Mr. Troutner would now be required by law.

It is important to note that the Planning Staff opposed the adoption of ZTA 06-04 for the reasons set forth in its Staff Report, attached hereto as Attachment Five. The Planning Board agreed with Planning Staff’s recommendation and recommended denial of ZTA 06-04 to the Council for the reasons set forth in its transmittal letter attached hereto as Attachment Seven.

Mr. Troutner, supplemented his request for reconsideration with written copies of testimony and e-mails in support of ZTA 06-04, attached hereto as Attachment Six.

II. RULES APPLICABLE TO RECONSIDERATION REQUEST

In accordance with the approved and adopted rules and procedures for the Montgomery County Planning Board, any party of record may, in writing, request the Planning Board to reconsider its determination on an action taken by the Board. The Planning Board must receive the request within ten days of the mailing date for the Opinion reflecting the action at issue.

The written request alone shall be the basis upon which the Board will consider whether reconsideration is warranted, although a Boardmember may seek clarifications from staff or other persons present to aid in her/his consideration. No party of record (including the party seeking reconsideration) may present testimony regarding the reconsideration request, unless called upon by a Board member to respond to a question. A party seeking reconsideration is encouraged to be thorough in drafting a written request, because the Board’s consideration of the issues will be limited to the contents of the written request and any staff consideration of those issues.

The Planning Board agenda routinely reserves time to allow the Board to consider any reconsideration requests that may have been transmitted to the Board. No notice need be sent of the Board’s consideration of a reconsideration request, nor is any particular reference required to be made on the printed agenda of a particular

² Attachment Three, p. 2.

request. Staff does attempt to advise the party requesting reconsideration of the date the request is scheduled to go before the Board for consideration.

Staff will forward to the Board a reconsideration request shortly after its receipt by the Commission. When the item is called by the Chairman, staff presents the reconsideration request to the Board and any Board member may pose questions about points raised in the request. Thereafter, only a Board member that voted in favor of the motion (action) for which reconsideration is being requested may make a motion to reconsider. If a motion is made to reconsider, any Board member may second the motion. As always, to succeed, the motion carries if supported by a majority of Board members then present and voting.

If no motion is made or a motion fails either for lack of a second or insufficient votes, the prior action stands unaltered in all respects, including time for administrative appeals.

If a motion to reconsider carries, no further action or consideration will occur at that time. Rather, the prior action is extinguished and staff will schedule the matter for public hearing, upon due notice, at a later date. The Board, at that time, will conduct a *de novo* hearing on the issue(s) that were the subject of the reconsideration request. This may be an entire project application, or may be narrowed in scope to specific issues.

Basis for Reconsideration

Grounds for reconsideration, as specified in the rules, are as follows:

1. The Board's action did not conform to relevant laws or procedures;
2. The Board was not timely provided pertinent and significant information relevant to the Board's ability to take the action at issue, and the request must include a statement explaining why the information was not provided at the time of the public hearing;
3. Other compelling reasons.

The Planning Board in its sole discretion is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Any and all materials submitted as part of the reconsideration request are excluded from the public hearing administrative record, unless submitted in the record prior to its closing.

III. CONCLUSION

In Legal Staff's opinion, there is no legal deficiency in the Planning Board's decision that requires reconsideration of the Board's prior action. In addition, the Planning Board's decision in this case is in accordance with the position it took in connection with its recommendation on ZTA 06-04. However, the Planning Board may decide to reconsider its prior action if it finds 1) just cause to grant a waiver of the 10-day limitation on the filing of reconsideration requests; and 2) that Mr. Troutner's request satisfies a basis for reconsideration as set forth in the Planning Board's Rules of Procedure.

ATTACHMENTS:

- Attachment One: Planning Board Opinion dated December 20, 2005
- Attachment Two: David Troutner's e-mail dated January 5, 2006, requesting reconsideration
- Attachment Three: Letter from Scott C. Wallace to Mr. Derick Berlage, Chairman and Members of the Montgomery County Planning Board dated May 12, 2006
- Attachment Four: ZTA 06-04
- Attachment Five: Staff Report on ZTA 06-04 dated February 24, 2006
- Attachment Six: Supplemental documents in support of ZTA 06-04 submitted by David Troutner on May 12, 2006
- Attachment Seven: Planning Board transmittal letter to the County Council on ZTA 06-04 dated March 2, 2006

DYD:cmd/df

Attachments

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Date Mailed: DEC 20 2005.

Action: Approved staff
recommendations.**Motion** of Commissioner Bryant,
seconded by Commissioner Wellington,
with a vote of 4-0.Chairman Berlage and Commissioners
Bryant, Wellington, and Robinson voted
in favor of the motion. Commissioner
Perdue was absent.**MONTGOMERY COUNTY PLANNING BOARD****OPINION**

Preliminary Plan 1-04110

NAME OF PLAN: The Reserve at Fair Hill

DEC 20 2005

The date of this written opinion is _____ (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

I. INTRODUCTION

On 6/30/04, Rogers Consulting and Pulte Homes ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the RNC (Rural Neighborhood Cluster) zone. The application proposed to create 133 lots on 334 acres of land located at both sides of Wickham Road south of MD 108 ("Subject Property"), in the Upper Rock Creek master plan area. The application was designated Preliminary Plan 1-04110. On 3/31/05, Preliminary Plan 1-04110 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the Applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. SITE DESCRIPTION

The subject property is a 334-acre site located on either side of Wickham Road southwest of its intersection with Laytonsville Road (MD 108). The property is zoned RNC. This property lies within the Upper Rock Creek watershed (Use III-P in this section). The existing conditions on the site include stream valleys and associated floodplains, wetlands converted into lowland pastures, upland agricultural fields and forest. The tract includes 151.4 acres of forest. The forest is scattered throughout the property with large tracts of upland forest. Not all environmental buffers are forested. The site includes 107 acres of environmental buffer, which includes 52 acres of wetlands.

III. PROJECT DESCRIPTION

This application proposes to create a residential community with 133 dwelling units. The units will be a combination of 113 one-family detached dwelling units and 20 one-family duplex units. The detached dwellings will be located on lots ranging in size from 15,000 square feet to more than three acres, with the majority of lots in the 15,000-19,000 square foot range. The duplex units (designated as MPDUs) will be located on lots as small as 6,000 square feet, distributed throughout the subdivision. The plan proposes a total of 242.86 acres, or 72.7 percent of the site, be preserved as open space. Approximately 183.39 acres of the open space, or 54.9 percent of the site, will be dedicated to M-NCPPC for parkland. The remaining open space areas will be preserved by conservation and rural open space easements. A combination of public and private modified tertiary open section residential streets, with sidewalks on one side, are proposed with up to eight lots having direct access to existing Wickham Road. Safe and adequate access for vehicles and pedestrians will be provided by the existing and proposed vehicular and sidewalk system. Site plan review pursuant to §59-D-3 is required for this project.

IV. RELATIONSHIP TO THE UPPER ROCK CREEK MASTER PLAN

The Upper Rock Creek Master Plan made specific recommendations for this property, noted in the Plan as the Freeman property for its owners at the time. The recommendations include guidelines for development to be applied at the time of subdivision of this property.

The Plan recommended a density of 0.33 units to the acre for the property. As drafts of the Plan moved through the review process, separate policy discussions on the appropriateness of expanding the Moderately Priced Dwelling Unit ("MPDU") program to the Rural Neighborhood Cluster and other "large-lot" zones also were underway. The Plan acknowledged these discussions—and the possibility of an ultimate decision to expand the MPDU program—by setting out an allowable density of 0.4 units to the acre if MPDUs were required as part of the property's development. The Council last year decided to expand the MPDU program to the large lot zones and they are therefore required as part of this preliminary plan. The 133 proposed units represent a density of 0.4 units to the acre, as recommended in the Plan. Fifteen percent of those units—20 in total—are MPDUs.

In addition to its recommendation for a development density, the Plan listed a series of guidelines for development that are duplicated below, followed by staff's analysis of the plan's conformance with those guidelines:

- Concentrate cluster development in unforested upland areas; existing forest adjacent to parkland is most appropriately kept intact, undeveloped and in its natural state as rural open space.

The proposed plan shows that almost 243 acres of the 334-acre property - or 72 percent of the site , are designated for public or private rural open space. A look at contemporary aerial photographs of the site shows that the areas proposed for the majority of the residential development are currently fields; forested areas adjacent to parkland to the west and to the east of the power lines are designated as rural open space and are to be preserved as parkland. Regulations set out in the zoning ordinance limit activities in rural open space, which will allow for preservation in an undeveloped state. The development itself is proposed for two main clusters to the west of Wickham Road, with development east of Wickham Road almost entirely devoted to conservation lots.

- Enhance compatibility in the western portion of this property by maintaining areas near existing communities as rural open space or by developing those areas with lots of similar size to those in the adjoining neighborhoods.

The proposed plan designates as parkland existing forest adjacent to existing park property on the west side of this property, adding to the open space between new homes on this property and existing communities. In addition, a number of larger lots have been located immediately adjacent to this designated parkland. These lots range in size from 26,000 to 44,000 square feet. The need to integrate required MPDUs into this development necessitates some flexibility in meeting master plan guidelines. The proposed lots are, admittedly, generally smaller than those in the nearest existing community, although the largest of them are similar in size to some existing lots. There is, however, a significant amount of undeveloped open space, almost all of it forest, that separates new homes from old in this area. The closest existing lots are more than an eighth of a mile from the nearest proposed lots. The distances involved make strict compatibility less necessary.

- Provide substantial variation in lots sizes, as required by the RNC Zone development standards; cluster neighborhoods should offer the broadest possible range of lot sizes.

The Applicant estimates that roughly half of the proposed lots are less than half an acre in size and half are larger. More specifically, an estimated 35 percent of the lots are between 15,000 square feet and 19,000 square feet in size. An estimated 41 percent are between half an acre and an acre in size. The Applicant is proposing some significantly smaller MPDU lots at one end of the lot size spectrum and some lots—about 8 percent of the total—that would be range from one acre to 10 acres in size. Discussions of this issue during review of both the master plan and the revisions to the RNC Zone seemed to focus on avoiding “cookie-cutter” subdivisions, in which the vast majority of lots were within a narrow size range. These discussions suggested that a “bell curve,” with some relatively small and relative large lots at either end of the spectrum was a desirable outcome for RNC communities. The lot range for the proposed project creates a bell curve, with most of the lots lying in a range from 15,000 square feet to an acre.

- Size and locate lots to ensure compatibility with existing development and preservation of rural views.

This guideline replicates the second guideline discussed above and a guideline discussed below, and the analysis from those guidelines are incorporated herein.

- Encourage diversity of house size and style

As part of its review of the master plan, the County Council approved this guideline. The language used recognizes that provision of housing styles and sizes is largely a component of market forces difficult to control through regulation. Discussions with the Applicant in this case indicate that individual buyers desire the relatively large houses being offered.

- Protect rural viewsheds

This guideline replicates one discussed below.

- Preserve existing views from MD 108 and low-density residential character by locating large lots, conservation lots or open space with a significant and varied landscape along the road.

The Applicant has designated as parkland a significant portion of the property that can be seen from MD 108; in addition, the Applicant has agreed to preserve an intact barn located in this part of the property. The two proposed conservation lots are located in this part of the property, as are three lots ranging in size from 1.75 acres to almost three acres. Long views over open fields from MD 108 are largely preserved in this scheme. It is staff's opinion that a total of four lots plus the preserved barn would best meet the master plan guideline. Because the final number and location of lots will be determined during review of this proposal's subsequent site plan, we recommend additional discussions with the Applicant about this issue.

- Incorporate open space into the clustered community to enhance the undeveloped nature of contiguous open space while providing residents with nearby recreation.

Common open space is shown in one of the two cluster neighborhoods; the other is adjacent to a future elementary school site and can be connected to the school by a path on a common open space parcel used primarily for stormwater management. Detailed discussion of the provision of common space for residents' recreation will occur during site plan review.

V. TRANSPORTATION

Staff concluded that the subject preliminary plan will provide safe and adequate access for vehicles and pedestrians for the reasons detailed below.

A. Pedestrian and Bicycle Facilities

A shared-use path is recommended by the Master Plan along MD 108 to the Boys and Girls Club. Sidewalks are required along the proposed residential street network. These recommended improvements would enhance the existing facilities for pedestrian and bicycle use in vicinity of the subject site. The existing facilities include a

shared-use path on the south and west side of Wickham Drive and a sidewalk on the south side of MD 108 along the property frontage.

Regarding the recommended shared-use path, one possible route follows the alignment for SP-36 along the north side of MD 108 within the available right-of-way between the intersection with Wickham Drive and the Boys and Girls Club. An alternative route follows the desired line for the Norbeck Grove Bike Path (B-21) through the North Branch Stream Valley Park between Wickham Drive near the southeastern property line and MD 108 approximately opposite Boys and Girls Club. Further study of the current need for, and alignment of, this bike path will occur as part of site plan review.

B. Local Area Transportation Review

The proposed 133-unit residential development generates 107 peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and 130 peak-hour trips during the weekday evening peak period (4:00 to 7:00 p.m.). A traffic study was required to satisfy Local Area Transportation Review because the proposed land use would generate 30 or more peak-hour trips during the weekday morning and evening peak periods.

Based on the results of the traffic study, Table 1 below shows the critical lane volumes (CLV) and the applicable congestion standard for the first five analyzed intersections in the study area. The CLV/congestion standards below reflect those under the *FY 2004 AGP* that are 50 CLVs higher than the CLV standards under the current *FY 2005 AGP*. The traffic conditions analyzed include the existing, background (existing traffic plus traffic from approved, but unbuilt developments), total, and total improved traffic conditions. The last intersection shown in the table below has a roundabout and was analyzed using the appropriate *Highway Capacity Manual's* methodology to determine the average delay in seconds and the corresponding level of service.

The CLVs at the intersection of MD 108 and Muncaster Road exceed the congestion/CLV standard during the weekday morning peak hour as indicated with the superscript No. 2 in the table above. The proposed eastbound right-turn lane from MD 108 onto Muncaster Road would increase this intersection's capacity so that the CLV in

the total improved traffic condition is less than the CLV in the background traffic condition. Thus, the site-generated traffic is mitigated as indicated with the superscript No. 2.

TABLE 1: Intersection Congestion Levels, Resulting CLVs, and Average Delay

Intersection / Roundabout	Capacity Criteria: CLV Standard ¹ /Delay	Weekday Peak Hour	Traffic Condition			
			Existing	Background	Total	Total Improved
MD 108 and Muncaster Road	Intersection CLV Standard=1,450	Morning	1,638 ²	1,773 ²	1,816 ²	1,552 ^{2,3}
		Evening	1,277	1,345	1,294	1,250
MD 108 and Wickham Drive ⁴	Intersection CLV Standard=1,450	Morning	n/a	1,253	1,303	-----
		Evening	n/a	1,405	1,427	-----
MD 108 and Olney Mill Road	Intersection CLV Standard=1,525	Morning	1,017	1,084	1,085	-----
		Evening	972	1,028	1,028	-----
MD 108 and Bowie Mill Road	Intersection CLV Standard=1,525	Morning	1,409	1,476	1,478	-----
		Evening	1,321	1,341	1,332	-----
Wickham Drive-Cashell Road and Bowie Mill Road	Intersection CLV Standard=1,525	Morning	991	996	1,035	-----
		Evening	1,050	1,058	1,083	-----
Wickham Drive and Olney Mill Road-Dumford Drive	Roundabout, Average Delay (in Seconds)	Morning	5.1 / A	5.1/A	4.8 / A	-----
		Evening	4.4 / A	4.4 / A	3.9 / A	-----

¹ (a) The congestion/CLV standard is 1,450 for the first and second intersections that located entirely in a rural policy areas such as the Rock Creek Policy Area. (b) The congestion/CLV standard is 1,525 for the third, fourth, and fifth intersections that located on the border or within the Olney Policy Area.

² The CLV at this intersection exceeds its congestion/CLV standard of 1,450.

³ The site-generated traffic is mitigated where the CLV in the total improved traffic condition is less than the CLV in the background traffic condition.

⁴ This intersection includes a proposed eastbound deceleration lane and acceleration lane along MD 108.

C. Policy Area Transportation Review

Under the *FY 2004 AGP*, the Policy Area Transportation Review component of the APF test is still applicable. The site is located in a rural policy area that has no established transportation staging ceilings for residential and non-residential developments.

D. Waiver Requests

A waiver of sidewalks on one side of the proposed public and private tertiary roads was recommended because it will help reduce the overall level of impervious surfaces on the property. The proposed roadways will be able to be safely crossed to reach the sidewalk. A waiver of the requirement for 150' turning radii on proposed private streets "HH" and "BB" was also recommended. The waiver will permit street geometry that will reduce overall traffic speed and permit the design of green space areas. The proposed reduction in the radii is the minimum necessary to accommodate the roadway design.

VI. ENVIRONMENTAL

The property is within the Upper Rock Creek Special Protection Area (SPA). Water quality plans are required as part of the Special Protection Area regulations.

Under the SPA law, Montgomery County Department of Permitting Services (MCDPS) and the Planning Board have different responsibilities in the review of the water quality plan. MCDPS has reviewed and conditionally approved the elements of the preliminary water quality plan under their purview. The Planning Board responsibility is to determine if the site imperviousness, environmental guidelines for special protection areas, and forest conservation requirements have been satisfied.

A. Site Performance Goals

As part of the final water quality plan, several site performance goals were established for the project:

1. Maintain the natural on-site stream channels.
2. Minimize storm flow run off increases.
3. Minimize increases to ambient water temperatures.
4. Protection of streams and aquatic life habitat.
5. Minimize sediment loading.
6. Maintain stream base flows.
7. Protect springs, seeps, and wetlands.
8. Identify and protect stream banks prone to erosion and slumping.
9. Minimize nutrient loading and control insecticides, pesticides and toxic substances.

B. Site Imperviousness

The Upper Rock Creek has an 8 percent impervious limitation. The Applicant is proposing a development that will result in an impervious rate of 7.2 percent. It is important to note that the imperviousness associated with Wickham Road is not included in the calculation. Wickham Road was required as part of an adjoining subdivision. The road is complete and the right-of-way dedicated to the County.

Environmental Planning believes that there are still ways to reduce the amount of impervious surfaces and will work with the Applicant during the site plan stage to reduce the amount of imperviousness in the development.

C. Environmental Guidelines

The environmental guidelines for SPAs require examination of many tools to maximize achievement of site performance goals. For instance, the goal of protecting seeps, springs, and wetlands is better achieved with naturalized buffers surrounding these areas. The natural resource inventory for the Chichester/Berlage/Freeman/Reserve at Fair Hill property identified the environmental buffers. Environmental buffers include wetlands and wetland buffers, floodplains, and streams and stream valley buffers. The application is not proposing any permanent encroachments into the environmental buffers.

As part of the *Environmental Guidelines*, the stream buffer must be reforested, unless otherwise directed by staff. In this particular plan, M-NCPPC Environmental Planning, Natural Resource, and Park staffs have agreed not to replant the unforested wetlands. The main portion of the stream buffer is along a tributary that connects MD 108 with the main stem of the stream. This portion of the site includes a naturally occurring wetland that was converted to pasture land and impacted by farm animals. Staff desires to have the wetland and wetland vegetation naturally regenerate with some assistance from the Applicant including the preparation and implementation of an invasive management plan. The unforested portions of the stream buffers that are not in wetlands must be planted in new forests. The Applicant will place forest conservation easements on all environmental buffers and all forest retention areas.

D. Forest Conservation

Since this application is utilizing an RNC MPDU optional method of development the plan must comply with Section 22A-12(f) of the Montgomery County code. This section requires developments utilizing an optional method to meet the appropriate forest conservation threshold on site. The Applicant will meet the requirements of Section 22A-12(f) by preserving forest on site. The Applicant is also required to plant approximately 25 acres of unforested stream buffers per the SPA guidelines.

The *Environmental Guidelines* require accelerated reforestation of stream valley buffers and staff is requesting a condition requiring planting to occur during the first planting season after issuance of the first sediment control permit. A five-year maintenance period is required for all forest plantings in Special Protection Areas per the guidelines.

Throughout the NRI/FSD review process and subsequent site visits by Environmental Planning and Natural Resource staff numerous invasive and exotic species were found in the unforested stream buffers and the existing forests. Environmental Planning is requesting an additional condition of approval requiring the Applicant to develop and implement an invasive and exotic management control program to run concurrently with the maintenance and management agreement. By developing and implementing an invasive management plan, newly planted trees will have a better chance of survival and should begin to shade out the competing vegetation. An invasive management program is necessary to prevent the entire area designated for wetland creation from becoming overwhelmed with invasive material. The most recent practice of pasturing animals in the wetlands has limited the amount of invasive plants in the wetland but once the cattle are removed the invasive material will expand.

E. Stormwater Management

To help meet the performance goals, the stormwater management plan requires water quality control and quantity control to be provided through an extensive system of linked best management practices (BMPs). Channel protection measures for this site will be provided via extended detention dry ponds. These structures will provide channel protection volume for the one-year storm with a maximum detention time of 12 hours per state standards. Quality control will be provided via a combination of structural and non-structural measures that include dry wells, surface sand filters, dry swales and grassed channels. All of the streets will be open section and have a two-foot wide flat bottom (private streets will have a two foot flat bottom on one side).

VII. HISTORIC PRESERVATION:

The ruins of the Chichester House (all that is left is some portions of the stone foundation) are proposed to be retained on land that will be dedicated to MNCPPC as perpetual open space. The ruins will be adjacent to the backyards of new houses in an environmentally sensitive area.

Staff discussed with the Applicants - Pulte Homes - several options for how the Chichester House ruins should be treated as part of this project. One idea was to stabilize the foundations, add benches and interpretative plaques, and leave the site as an interpretative area. The drawbacks to this approach include the fact that the ruins are not located in a prominent location that will be viewed by many members of the public

and the fact that M-NCPPC has a difficult time providing long-term maintenance for small interpretative areas as described above.

Staff began discussions on other forms of mitigation that would serve a broader and greater public benefit. A major goal of the county preservation program is to finish the review of all properties identified on the *Locational Atlas and Index of Historic Sites*. This inventory, published in 1976, has still not been fully evaluated and resources identified on the *Atlas* are being lost through incremental change and demolition without permits. Staff discussed the possibility of a one-time grant to MNCPPC to assist with the survey and evaluation of a group of properties in the general vicinity of Chichester House - Planning Areas 10 and 15.

After negotiation, the Applicants offered a one-time grant of \$25,000 to assist with surveying and researching historic resources in Planning Areas 10 and 15. The Chichester House ruins would not be destroyed or moved and would be protected during construction.

Staff feels that this is good solution and is in the public interest. Creation of an interpretative area will benefit very few members of the public because of the location of the site. Staff is also concerned that it will fall into rapid disrepair and there is no funding for long-term maintenance. However, work on evaluating *Locational Atlas* resources in Planning Areas 10 and 15 has the potential to protect many historic resources that are still extant and that are currently threatened.

Based on staff recommendations, the Historic Preservation Commission approved the subdivision proposal with the conditions included above.

VIII. SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the Application in its memorandum dated March 24, 2005 ("Staff Report"). Staff presented its findings consistent with the Staff Report at the hearing.

The Applicant appeared at the hearing represented by legal counsel. The Applicant testified that it accepted Staff recommendations and conditions, and reiterated staff's conclusion regarding the Plan's consistency with the Master Plan, noting the important public features of the proposed Plan and the Plan's protection of sensitive resources.

No other speakers testified at the hearing.

Staff testified that it had received two letters regarding the proposed development. The first was from an adjacent property owner directly across the North Branch Stream Valley Park from the proposed development. Concerns raised included

opposition to the inclusion of moderately priced dwelling units in this subdivision and proposed location of houses on certain lots. As discussed above, the County Council decided to expand the MPDU program to include lower density and large lot subdivisions on sewer. Therefore, MPDUs are required for this subdivision. Although the preliminary plan shows possible house locations and sizes, the exact layout of houses will not be determined until site plan review. At that time, further consideration will be given to providing adequate yard areas and edge tree protection.

The main concern raised in the second letter from Mr. David Troutner on behalf of the Muncaster Area Civic Association was the need for a written easement or covenant over the rural open space area proposed as part of the subdivision that will be dedicated to the public as parkland. He asserts that these documents are required to ensure that the publicly owned land will be preserved in perpetuity. To that end, he believes the Planning Board should review and approve easement or covenant language (including specific covenants on proposed parkland dedication) prior to the approval of the preliminary plan. Staff recommended against such an easement over the publicly held land as it is not required by law, although staff did recommend Condition #27 which requires the recordation of appropriate preservation agreements at the time of record plat review over the privately held open space.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies²; the Applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-04110 substantially conforms to the Upper Rock Creek master plan for the uncontested reasons detailed in Section IV. The proposed preliminary plan is consistent with the master plan goal to maintain the area's residential character.
- b) The uncontested evidence of record demonstrates that a waiver of sidewalks on one side of the proposed public and private tertiary roads will help reduce the overall level of impervious surfaces on the property, and that pedestrians will be able to cross the he proposed roadways safely to reach the sidewalk.
- c) The uncontested evidence of record demonstrates that a waiver of the requirement for 150' turning radii on proposed private streets "HH" and "BB"

² The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

will permit street geometry that will reduce overall traffic speed and permit the design of green space areas. The uncontested evidence of record also shows that the proposed reduction in the radii is the minimum necessary to accommodate the roadway design.

- d) The uncontested evidence of record demonstrates that all public facilities will be adequate to support and service the area of the proposed subdivision.
- e) The uncontested evidence of record demonstrates that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- f) The uncontested evidence of record demonstrates that the application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- g) The uncontested evidence of record demonstrates that the application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- h) The uncontested evidence of record demonstrates that the application satisfies all the applicable requirements of Montgomery County Code Chapter 19, Article V (Water Quality Review in Special Protection Areas). This finding is subject to any applicable condition(s) of approval.
- i) The application appropriately provides for inclusion of MPDUs in an RNC subdivision, consistent with the County Council requirements.
- j) The application, as conditioned, appropriately addresses the protection of open space on privately owned property through preservation agreements to be recorded at the time of record plat review. The publicly owned open space property, as recommended by staff, will not be subject to covenants or easements, nor is it required by law to be restricted through such easements. Review of detailed easement language for the privately held open space will occur during the site plan approval process.
- k) The Board further finds that any objection (concerning a substantive issue) that was not raised prior to the closing of the Record is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04110 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04110, including: a waiver pursuant to §50-26(h)(3) to permit sidewalk on only one side of proposed public tertiary roads and private streets; waiver of §50-26(f) pursuant to §50-38(a) to permit reduced centerline radii on private streets "HH" and "BB"; and to approve the Preliminary SPA Water Quality Plan; subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 133 dwelling units, including 20 Moderately Priced Dwelling Units (MPDUs).
- 2) No clearing, grading, or recording of plats prior to site plan approval.
- 3) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
- 4) Dedication of approximately 192 acres of open space by Applicant to M-NCPPC as indicated on proposed plan per the Upper Rock Creek Area Master Plan. Subject to final adjustments at site plan, dedicated areas to include Parcels 'M', 'Q' and 'H' in Block 'B', Parcel 'A' in Block 'A', Parcel 'B' in Block 'G', and Parcel 'C' in Block 'H'. Land to be conveyed at time of record plat and be free of trash and unnatural debris. Park boundaries to be staked and signed to distinguish between parkland and private properties.
- 5) Location and alignment of natural surface trails to be constructed by the Applicant in accordance with the Countywide Trails Master Plan, including needed bridges or stream/wetland crossings, to be determined at the time of site plan.
- 6) Construction by Applicant of a small, paved, trailhead parking area for up to ten (10) cars on dedicated parkland along Wickham Road for public access to the natural surface trail system.
- 7) Location and alignment of natural surface trails and trailhead parking area to be coordinated with, and acceptable to, M-NCPPC staff and be constructed to park standards and specifications.
- 8) Applicant to provide adequate public use trail access from the community to the parkland and natural surface trail system.

- 9) Compliance with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
- 10) Applicant to reforest all stream buffers except those identified by staff for wetland creation.
- 11) Applicant to reforest stream buffers in the first planting season after the issuance of the first grading permit by the Montgomery County Department of Permitting Services (DPS).
- 12) Applicant to develop and implement an invasive and exotic species management plan for all forest conservation easement areas to run concurrently with the maintenance and management agreement.
- 13) Total impervious surfaces for the development shall not exceed the 8 percent impervious cap.
- 14) The applicant must submit a detailed impervious tabulation as part of the site plan submission indicating the amount of impervious surface in public and private streets, public and private sidewalks, parking lots, tot lots and the amount of impervious surface on each lot. The on lot impervious information must identify the square footage for the footprint of houses, detached garages, patios, lead walks, porches/stoops, entranceways, all building protrusions and accessories less than 2 feet above the ground level, and driveways from the building front to the roadway pavement.
- 15) Conformance to the conditions as stated in the DPS letter dated February 15, 2005 approving the elements of the SPA water quality plan under its purview.
- 16) Compliance with the conditions of the MCDPS stormwater management approval dated February 15, 2005.
- 17) The Applicant shall dedicate all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Upper Rock Creek Master Plan unless otherwise designated on the preliminary plan.
- 18) The Applicant shall construct all road rights-of-way shown on the approved preliminary plan to the full width mandated by the Upper Rock Creek Master Plan and to the design standards imposed by all applicable road codes. Those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.

- 19) Applicant to construct an eastbound right-turn lane from MD 108 onto southbound Muncaster Road. The design should be in accordance with the standards of the Maryland State Highway Administration (SHA) and the Montgomery County Department of Public Works and Transportation (DPWT).
- 20) Applicant to provide four-foot -wideconcrete sidewalks on one side of both the modified public tertiary residential streets and the private streets.
- 21) Compliance with conditions of MCDPWT letter dated February 11, 2005 unless otherwise amended.
- 22) Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s).
- 23) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
- 24) Applicant shall construct a connecting pedestrian pathway to the school site, the alignment of which shall be determined in coordination with M-NCPPC staff and Montgomery County Public Schools at the time of site plan.
- 25) The ruins of the Chichester historic site should be retained on land dedicated to M-NCPPC and should be protected during all construction.
- 26) In commemoration of the lost historic site, the Applicant will provide a one-time grant of \$25,000 to M-NCPPC to be used for surveying and researching historic resources in Planning Areas 10 and 15.
- 27) In commemoration of the lost historic site, the Applicant will install an educational marker at a prominent location within the new community that will describe the Chichester House.
- 28) In commemoration of the lost historic site, the Applicant will name a road in the new community "Chichester House Road", as long as the road name is approved by M-NCPPC.
- 29) Record plat to reflect delineation of Rural Open Space areas and make note of the Liber and Folio of an easement agreement or covenant recorded in the land records which restricts the uses in the rural open space to those set forth in the RNC zone and establishes procedures for the management of natural or agricultural features as set forth in the approved site plan. Record plat to have the following note: "The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."

- 30) Record plat to reflect delineation of a Category I Conservation Easement over all areas of stream buffer and forest conservation.
- 31) Record Plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 32) Record plat to reflect common ingress/egress and utility easements over all shared driveways.
- 33) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Opinion.
- 34) Other necessary easements.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

* * * * *

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

NR 8/29/05

Approved for legal sufficiency
M-NCPPC Office of General Counsel

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, December 15, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for The Reserve at Fair Hill, Preliminary Plan No. 1-04110. Commissioner Perdue abstained and Commissioner Bryant was absent.



Certification As To Vote of Adoption
Technical Writer

-----Original Message-----

From: Troutner, Dave [mailto:Dave.Troutner@nasd.com]

Sent: Thursday, January 05, 2006 1:04 PM

To: MCP-Chairman

Cc: Rosenfeld, Michele; debra.daniel@mncpp-mc.org; Oquinn, Marybeth; Conlon, Catherine; councilmember.leventhal@montgomerycountymd.gov; councilmember.andrews@montgomerycountymd.gov; councilmember.denis@montgomerycountymd.gov; councilmember.praisner@montgomerycountymd.gov; councilmember.floreen@montgomerycountymd.gov; councilmember.knapp@montgomerycountymd.gov; councilmember.silverman@montgomerycountymd.gov; councilmember.subin@montgomerycountymd.gov; icsleggett@msn.com; Espy Driscoll; Lori Keesey; Petrocci's; Elaine Jagoda; Bob Kneisley; Arnie Gordon; Barbara Falcigno; Brenda Egeland; Cathy Clark; mcynamon@cdc.gov; Karen Ehrlich; karenehrlich@erols.com; Wayne Goldstein; jolyons@skadden.com; Devin Battley; John Anayannis (E-mail); Bernie Free (E-mail); Robert Ostrinsky (E-mail); Steve Joseph (E-mail); rpoole@mri.jhu.edu; Carole Carlson; Jim Snee; Symborski, Mark; Dolan, Mary; Boyd, Fred; Iseli, Claire; muncasterareaca@aol.com

Subject: The Reserve at Fair Hill, Site Plan 1-04110

Dear Chairman Berlage and Commissioners of the Montgomery County Planning Board:

This is a request for reconsideration of your Opinion on Preliminary Plan 1-04110, The Reserve at Fair Hill, that you adopted on December 15, 2005. In the first full paragraph on Page 12 of the Opinion, on the issue of subdivision and dedication of public use parkland to the County, the staff opined that a written easement or covenant that establishes such land be preserved and held as Rural Open Space in perpetuity is not required by law. That is a faulty interpretation of the RNC Zone, and erodes the spirit and intention of the RNC Zone as a long-term land use measure within the recently amended Upper Rock Creek Master Plan.

Without an easement or covenant on the publicly owned land, how will the County ensure that the land dedicated and conveyed to it as parkland will never be subdivided and/or further developed, forever remain restricted to uses set forth in the RNC Zone and conditions of the Site Plan approval, and establish and ensure procedures for the management of those natural parkland features in perpetuity?

On Page 12 of the Opinion, the staff recommended against easements or covenants over the publicly held land as they think it is not required by law, and note that they did recommend Condition #27 "which requires the recordation of appropriate preservation agreements at the time of the record plat review over the privately held open space." Clearly, that does not address how the County will ensure that the publicly held land remains in the Rural Open Space condition in perpetuity. Furthermore, Condition #27 on Page 16 of the Opinion, has to do with an educational marker on a historic site. (Did anyone bother to read this Opinion?) Perhaps the staff meant to refer to the Condition of Approval #29. If so, does Condition #29 apply to the delineated Rural Open Space held both publicly and privately? Condition #29 should apply to publicly held Rural Open Space in that it prudently calls for an easement or covenant to ensure that the rural open space parkland set forth in the approved Site Plan remains restricted and managed to the uses and features as set forth in the approved Site Plan and prohibits any further development or subdivision. Without such condition, the County government can not guarantee that it will not use or convey the land to other uses at a future time and that the public land will be "preserved in perpetuity." The County will be negligent in taking ownership. The County will be liable should the land ever be conveyed and/or used in any way contrary the present open space conditions. The best interests of the citizens of the County will have been ignored. The integrity of the Park and Planning process and the trust in our local

4/9/2006

ATTACHMENT TWO

government will continue to be negatively impacted.

Please amend the Site Plan Opinion and Approval to be conditioned on a written easements or covenants on all of the Rural Open Space delineated area (both public and privately owned parcels) that set forth the restricted uses of the RNC Zone, establish procedures for the management of natural or agricultural features as set forth in the approved site plan, and prohibit any further development or subdivision within the rural open space area.

Sincerely yours,

David R. Troutner

19101 Artesian Court, Derwood, MD

P.S. - Procedurally, let me note for your record that the Opinion document is stamped December 20, 2005 as the date mailed. However, the post mark on the envelope was December 23. It did not arrive in my mailbox until sometime between December 27 and December 30. Being the Holiday Season and on vacation, I personally received the package the afternoon of December 31.

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4/9/2006

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Sent: Thursday, January 05, 2006 1:04 PM

To: MCP-Chairman

Cc: Rosenfeld, Michele; debra.daniel@mncpp-mc.org; Oquinn, Marybeth; Conlon, Catherine; councilmember.leventhal@montgomerycountymd.gov; councilmember.andrews@montgomerycountymd.gov; councilmember.denis@montgomerycountymd.gov; councilmember.praisner@montgomerycountymd.gov; councilmember.floreen@montgomerycountymd.gov; councilmember.knapp@montgomerycountymd.gov; councilmember.silverman@montgomerycountymd.gov; councilmember.subin@montgomerycountymd.gov; icsleggett@msn.com; Espy Driscoll; Lori Keesey; Petrocci's; Elaine Jagoda; Bob Kneisley; Arnie Gordon; Barbara Falcigno; Brenda Egeland; Cathy Clark; mcynamon@cdc.gov; Karen Ehrlich; karenehrlich@erols.com; Wayne Goldstein; jolyons@skadden.com; Devin Battley; John Anayannis (E-mail); Bernie Free (E-mail); Robert Ostrinsky (E-mail); Steve Joseph (E-mail); rpoole@mri.jhu.edu; Carole Carlson; Jim Snee; Symborski, Mark; Dolan, Mary; Boyd, Fred; Iseli, Claire; muncasterareaca@aol.com

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ATTACHMENT TWO

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Sincerely yours,

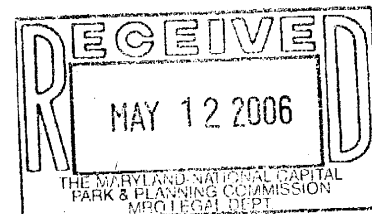
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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW



May 12, 2006

Scott C. Wallace
301.961.5124
swallace@linowes-law.com

Mr. Derick Berlage, Chairman
and Members of the Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: The Reserve at Fair Hill- Preliminary Plan No. 1-04110 (the "Preliminary Plan") -
Opposition to Request for Reconsideration-Planning Board Agenda Item, May 18, 2006

Dear Chairman Berlage and Planning Board Members:

This office represents Pulte Home Corporation ("Pulte"), the owner and developer of an approximately 334-acre tract of land zoned Rural Neighborhood Cluster ("RNC") and located on the east and west sides of Wickham Road between Laytonsville Road (MD 108) and Tackbrook Drive (the "Property"). The referenced Preliminary Plan was unanimously approved by Opinion of the Board dated December 20, 2005 for the development of 133 single-family homes on the Property with a condition (Condition 4 of the Opinion) that Pulte dedicate approximately 192 acres of open space to the M-NCPPC as public parkland (the "Parkland Dedication"). On behalf of Pulte, we are writing to oppose the request for reconsideration of the Preliminary Plan made by Mr. David Troutner, via electronic correspondence to you dated January 5, 2006, which is scheduled to be reviewed by the Board on May 18, 2006 (the "Reconsideration Request").¹

The Reconsideration Request

The sole basis of the Reconsideration Request is Mr. Troutner's request that the Preliminary Plan be conditioned on the recordation of a covenant providing for perpetual conservation of the Parkland Dedication. Section 11 of the Planning Board's Rules of Procedure provides that "a request to reconsider may only be made by a party of record, must be in writing, and unless waived by the Board for just cause must be received within 10 days of the date of final decision." Per Section 11, the party requesting reconsideration must demonstrate sufficient grounds for the reconsideration, which may include (1) a clear showing that the action of the Board did not conform to relevant law or its rules of procedure; or (2) evidence indicating that certain pertinent

¹ The Preliminary Plan was appealed by Mr. Troutner to the Montgomery County Circuit Court on or about January 13, 2006 (the "Appeal"). By Order entered April 28, 2006, the Circuit Court, as requested by the Planning Board, remanded the Preliminary Plan back to the Planning Board for the sole purpose of considering the Reconsideration Request. If the Planning Board does not grant the Reconsideration Request, the Appeal will be returned to the Circuit Court for consideration.

ATTACHMENT THREE

Mr. Derick Berlage, Chairman
and Members of the Montgomery County Planning Board
May 12, 2006
Page 2

and significant information relevant to the Board's decision was not presented at the public hearing before the Board or otherwise contained in the record, together with a statement detailing why such information was not timely presented; or (3) such other appropriate compelling basis as determined by the Board. As discussed in detail below, the Reconsideration Request was not timely filed, and, further, Mr. Troutner has not made a showing in support of the Reconsideration Request that the Planning Board violated any applicable law or procedural requirements in approving the Preliminary Plan, or present any new information regarding the Preliminary Plan that was not presented at the public hearing on the Preliminary Plan or otherwise contained in the record of the Preliminary Plan.

A. The reconsideration request was not made in a timely manner.

Initially, we note the Reconsideration Request was not timely filed in accordance with the Section 11. As cited above, Section 11 states that "a request to reconsider may only be made by a party of record, must be in writing, and unless waived by the Board for just cause must be received by the Planning Board within 10 days of the date of the final decision." The date of final decision for purposes of Section 11 is the date the Planning Board Opinion is mailed, which was December 20, 2005 for the Preliminary Plan. Mr. Troutner's Reconsideration Request was submitted to the Planning Board on January 5, 2006, 16 days after the date the Preliminary Plan Opinion was mailed and no justification or cause for the failure to timely file the Reconsideration Request was offered. In fact, Mr. Troutner acknowledges in the Reconsideration Request that he received the Preliminary Plan Opinion within the 10 day period for filing under Rule 11, but still failed to timely file the Reconsideration Request. Therefore, Mr. Troutner's request is not properly before the Board and we respectfully suggest that the fair and proper exercise of the Board's Rules of Procedure dictate the Planning Board not consider this Reconsideration Request.

B. The reconsideration request is not based on sufficient grounds.

Beyond the procedural deficiency discussed above, the sole basis presented in the Reconsideration Request by Mr. Troutner - namely that the Planning Board misinterpreted the requirements of the RNC Zone by not requiring recordation of an easement or covenant on the parkland dedication providing for perpetual conservation - involves an issue that was reviewed by Planning Staff and the Planning Board at the public hearing on the Preliminary Plan and was addressed in the Preliminary Plan Opinion.

Mr. Derick Berlage, Chairman
and Members of the Montgomery County Planning Board
May 12, 2006
Page 3

In particular, the record of the Preliminary Plan record clearly indicates that this issue was specifically considered and addressed by Planning Staff and the Planning Board as follows:

- The record of the Preliminary Plan contains letters from Mr. Troutner to the Planning Board dated March 1, 2005, March 14, 2005 and March 31, 2005 that raises the issue of open space covenants and/ or easements for publicly held open space and requests the Planning Board require the Parkland Dedication pursuant to the Preliminary Plan be subject to a conservation covenant;
- The Planning Staff report for the Preliminary Plan dated March 24, 2005 acknowledges and discusses the letters submitted by Mr. Troutner raising the issue of recordation of a conservation easement on the Parkland Dedication. (See attached page 13 excerpted from the March 24, 2005 Planning Staff report, "Attachment "1"");
- The Preliminary Plan public hearing transcript from March 31, 2005 reflects Staff's discussion and consideration of the issue of the recordation of open space covenants and/ or easements for public land and specific recommendation to the Planning Board that the RNC Zone does not require a covenant to be placed on the Parkland Dedication. (See Transcript excerpts, pages 577 to 578, Attachment "2").

Based on this testimony before it, the Planning Board made a specific finding (Finding "J" on page 13 of the Preliminary Plan Opinion) that "the publicly owned public space will not be subject to covenants or easements, nor is it required by law to be restricted through such easements, and therefore, did not condition the Preliminary Plan on a requirement for recordation of covenants or easements on the Parkland Dedication."

Accordingly, the record is clear that the sole issue raised by Mr. Troutner in the Reconsideration Request was thereby reviewed and addressed by Planning Staff and the Planning Board at the public hearing on the Preliminary Plan and the decision of the Planning Board not to require the recordation of an open space covenant for the Parkland Dedication was in full compliance with the legal requirements of the Zoning Ordinance regarding preservation of open space in the RNC Zone. Mr. Troutner has not presented any information in the Reconsideration Request on this issue that was not available to the Planning Board at the public hearing on the Preliminary Plan and the Planning Board action conformed to relevant law in all respects. Therefore, Mr. Troutner has not presented any basis for the Planning Board to grant the Reconsideration Request, even if it had been timely filed, and we respectfully request the Reconsideration Request be denied per Section 11 of the Board's Rules of Procedure.