

The final record plat shall also reflect dedication of necessary truncation, at intersection corners.

- 3) The Applicant shall resolve all outstanding issues and satisfy all conditions/comments pertaining to the Montgomery County Department of Public Works and Transportation (DPWT) approval letter dated July 21, 2005, (Attachment A) and shall provide written notification to both the Development Review Division and the Transportation Planning staff prior to the final record plat that all outstanding issues are resolved.
- 4) Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. (Attachment B) All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.
- 5) Complete required traffic signal warrant studies. If approved by SHA, design/install a fully operational traffic signal at Applicant's expense at:
  - a. the site access driveway intersection with the local lanes of US 29
  - b. the Burtonsville Access Road intersection with MD 198.

The timing for the installation for these signals shall be coordinated as required by SHA and DPWT.

- 6) All SHA and DPWT site frontage, site access and roadway/intersection improvement design concerns related to this development shall be addressed fully to the satisfaction of the respective agencies prior to the final record plat. Any physical improvement along the proposed alignment for Burtonsville Access Road shall conform to applicable DPWT design for the roadway.
- 7) Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29 (Burtonsville Boulevard) along the entire property frontage. Extend this shared-use path and tree panel further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41]). The shared-use path shall be offset two feet from the property line.
- 8) Construct a five-foot wide sidewalk and an eight-foot tree panel on MD 198 along the entire property frontage. The sidewalk shall be offset two feet from the property line.

- 9) Manage all shopping center related vehicular traffic, queues and parking within the property without spillover to US 29, MD 198, and Burtonsville Access Road.
- 10) All on- and off-site sidewalk/shared-use path ramps and crosswalks shall conform to Americans with Disabilities Act (ADA) standards.
- 11) The development on the site shall have adequate lead-in sidewalks from US 29, MD 198, and Burtonsville Access Road.
- 12) The development on the site shall have a pedestrian friendly internal street network, which will be in substantial conformance with the Fairland Master Plan guidelines, and shall meet the minimum requirements for the internal streetscape/sidewalks as required by the Building Officials and Code Administrators International Code used for Montgomery County.
- 13) 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, including:
  - b. 2.83 acres of offsite reforestation or forest bank to be identified by Applicant and approved by M-NCPPC staff prior to approval of record plat.
  - c. Final forest conservation plan to include a reconfiguration of the proposed SWM pond to provide more forest retention near the northern part of the pond, *if feasible and to locate a pathway from school site to shopping center access road in coordination with MCPS*. If additional forest retention is not feasible, provide documentation to demonstrate why the additional retention is not feasible.
  - d. Applicant to provide landscaping *and fencing* in consultation with MNCPPC staff and MCPS staff for perimeter of adjacent school site.
- 14) Applicant is bound to the elements of the Illustrative Circulation Plan dated June 2004, regarding general street cross sections, sidewalks locations, sidewalk widths, sidewalk amenities, street trees and crosswalk treatment.
- 15) Obtain a waiver of the setbacks from MCDPS for parking facilities along the zoning line immediately to the west of the proposed shopping center prior to building permits. If a waiver cannot be secured, parking

facilities must comply with setbacks as per Section 59-E-2.81 of the Zoning Ordinance.

- 16) Compliance with the conditions of the MCDPS stormwater management approval dated ~~July 13~~ June 2, 2005.
- 17) 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.
- 18) Other necessary easements.
- 19) Record plat to reflect a Category I conservation easement on all stream valley buffers and areas of forest conservation and afforestation.

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.

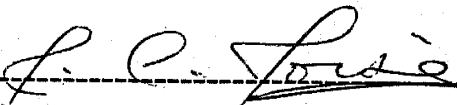
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

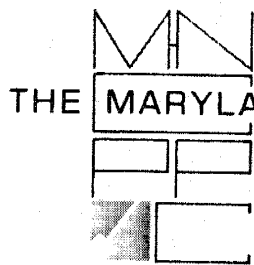
\_\_\_\_\_  
Approved:  
M-NCPPC

*MF 3/13/06*  
\_\_\_\_\_  
Sufficiency  
General Counsel

**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on **Thursday, March 16, 2006**, 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 **Preliminary Plan No. 1-04109, Burtonsville Shopping Center.**

  
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Certification As To Vote of Adoption  
M. Clara Moise, Technical Writer



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

OFFICE OF  
THE GENERAL COUNSEL

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

March 27, 2006

Timothy Dugan, Esquire  
Attorney at Law  
Shulman Rogers Gandal Pordy & Ecker, P.A.  
11921 Rockville Pike  
Rockville, Maryland 20852-2743

RE: Burtonsville Shopping Center  
Northwest Corner of U.S. Route 29 and MD Route 198  
Preliminary Plan Application No. 1-04109

Dear Mr. Dugan:

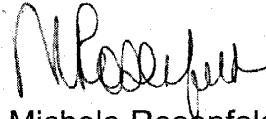
I am responding to your letter of December 29, 2005 ("Letter"), seeking modification of certain text within the body of the opinion for the above-referenced project, and modification or deletion of certain conditions of approval. Enclosed please find a copy of the corrected opinion, as approved by the Planning Board on March 16, 2006. It corrects condition number 2 (which did not include the specific language before the Board at the time it reviewed the plan), and condition number 16, which inadvertently referenced the wrong date for the stormwater management approval letter from the Department of Permitting Services (DPS).

The remaining changes that you requested in your Letter either proposed to delete conditions that were expressly approved by the Board, or proposed to modify text that explains the Board's decision. If you wish to pursue further changes to the opinion language, you must either file a request for reconsideration within 10 days of the mailing of the corrected opinion, or seek an amendment to the approved plan.

**ATTACHMENT THREE**

Should you have any questions, or require additional information, please call me at 301-495-4646.

Sincerely,

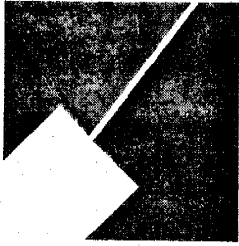


Michele Rosenfeld  
Associate General Counsel

MMR:cmd

cc: Faroll Hamer, Acting Director, Montgomery County Planning Department  
Stuart Rochester, Chair, Fairland Master Plan CAC  
A. C. Brown, President, Patuxent Watershed Protection Association, Inc.  
Jim J. Hughes, Vice President, Patuxent Master Plan CAC

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

**Board Approval Date:** July 28, 2005

**Date Mailed:** MAR 21 2006

**Action:**

Approved Staff Recommendation  
**Motion** of Commissioner Bryant,  
seconded by Commissioner Perdue,  
with a vote of 4-0.  
Chairman Berlage and Commissioners  
Perdue, Bryant and Wellington voting in  
favor. Commissioner Robinson was  
absent.

**MONTGOMERY COUNTY PLANNING BOARD**

**CORRECTED**

**OPINION**

Preliminary Plan 1-04109

NAME OF PLAN: Burtonsville Shopping Center

I. **Introduction**

The date of this written opinion is MAR 21 2006 (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).

On 6/30/04, BMC Property Group ("Applicant") submitted an application for the approval of a preliminary plan of subdivision of property in the C-2 zone. The application proposed to create 1 lot on 27.55 acres of land located at the Northwest Quadrant of the intersection of Columbia Pike (US 29) (aka Burtonsville Boulevard) and Spencerville Road (MD 198), in the Fairland master plan area. The application was designated Preliminary Plan 1-04109. On 7/28/05, Preliminary Plan 1-04109 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 and Project Descriptions

The 27.15-acre property is located in the northwest quadrant of the intersection of Columbia Pike (US 29) and Spencerville Road (MD 198). The majority of the site is unrecorded; the portion in the immediate corner of the 29/198 intersection is recorded by plat. It is within the Patuxent River watershed (Use I waters). The eastern portion of the site is an existing shopping center. About 14.37 acres of the property is in forest cover. A small stream traverses the northwestern portion of the property. A severely eroded gully lies along part of the property line that is adjacent to the elementary school. The gully connects into the stream immediately offsite. The gully was most likely created from uncontrolled stormwater runoff from the existing shopping center and the adjacent elementary school site.

This application is a request to redevelop the existing Burtonsville Shopping Center. The property is zoned C-2 and under the proposed development scenario, will not be required to undergo Site Plan review. The Fairland Master Plan makes specific recommendations regarding the redevelopment of the site as detailed in the Community Based Planning memorandum. One overriding theme of the master plan guidance is the need for a pedestrian friendly design. While recognizing that the project will not be subject to Site Plan review, staff did request and receive an Illustrative Circulation Plan to show the general concepts of internal street cross-sections, sidewalk widths, setbacks, amenities and crosswalks. Sidewalks with associated lead walks along the U.S. 29 and MD 198 frontages are also provided.

Access to the property is to be accommodated at two locations: one on U.S. 29 and the other on MD 198 (loop road). The layout of the buildings on the property is conceptual and is shown as a number of building pads within the parking lots to provide flexibility for future tenants. The plan proposes 809 underground parking spaces and 521 surface parking spaces. The Montgomery County Department of Permitting



Services will need to review and approve a Parking Facilities Plan as part of the building permit review for this site. The plan as shown will require a waiver of the required setback for parking facilities from the adjacent residential (RC) zone. The decision on the waiver will be made by DPS. Staff's recommended conditions require the Applicant to:

- 1) Obtain approval of a waiver from the Director of MCDPS prior to issuance of building permits and as part of the Parking Facilities Plan review, or
- 2) Meet the minimum setback requirements as required under 59-E-2.81.

### III. FAIRLAND MASTER PLAN - Conformance

Staff concluded that the proposed plan complies with the recommendations of the Fairland Master Plan, as discussed in detail in the staff report prepared by the Community Based Planning Staff Report.

### IV. TRANSPORTATION

The site is located within the northwest quadrant of the local lanes of Columbia Pike U.S. 29 (Burtonsville Boulevard)/MD 198 intersection (just west of the new U.S. 29 Relocated/MD 198 interchange currently under construction). Access to the site is proposed from both Burtonsville Boulevard and MD 198 (through the future Burtonsville Access Road). Currently, several bus routes (Metrobus routes Z3, Z5, Z8, Z9, Z29, and MTA Routes 915 and 929) provide service along US 29 and MD 198 in the area. The Burtonsville Park and Ride Lot is located within the northeast quadrant of US 29 (Burtonsville Boulevard)/MD 198 intersection next to the Burtonsville Crossing Shopping Center.

The Approved and Adopted 1997 *Fairland/Cloverly Master Plans* include the following nearby master-planned roadway, bikeway, pedestrian, and trail facilities:

1. US 29 local lanes or Burtonsville Boulevard, to the east of the property, as a six-lane divided Major Highway (M-10a) from south of MD 198 to Dustin Road (to the north). A minimum right-of-way width of 100 to 200 feet is recommended for this section of the roadway. A Class I bikeway is also recommended in the master plan for this section of local US 29.
2. Sandy Spring Road/Spencerville Road (MD 198), as a four-lane divided major highway (M-76) with a minimum right-of-way width of 120 feet, and with a Class I bikeway (PB-34) to the south side of the roadway between Old Columbia Pike/US 29 and the Prince George's County line. The 2005 Countywide Bikeways Functional Master Plan recommends a Shared-Use Path for MD 198 between Layhill Road to the west in Cloverly and the Prince George's County line to the east (SP-20 and SP-21).

3. Old Columbia Pike, as a two-lane Primary Road (P-25c) with a minimum right-of-way width of 70 feet between MD 198 to the north and Briggs Chaney Road to the south, and with sidewalks. As recommended in the Master Plan, four-foot wide sidewalks are provided along both sides of Old Columbia Pike. The roadway is also a Class II bikeway facility (EB-13; BL-12 in the 2005 Countywide Bikeways Functional Master Plan).
4. Burtonsville Access Road, to the north of MD 198 between MD 198 and the access road to Burtonsville Elementary School, as a two-lane Business District Street (B-7), with a minimum right-of-way of 60 feet.
5. Riding Stable Road, as a two-lane Primary Road (P-47) with a minimum right-of-way width of 70 feet, and with a rural open-section to the north of MD 198 and a Class III bikeway (PB-61) between MD 198 to the south to the Prince George's County line/Brooklyn Bridge Road to the north.
6. McKnew Road, as a two-lane primary road (P-26) with a minimum right-of-way width of 70 feet, and with sidewalks between MD 198 and Sugar Pine Court on both sides. The portion of McKnew Road to the south of Sugar Pine Court is currently built to master plan recommendations with sidewalks on both sides.
7. Cedar Tree Drive, as a two-lane primary road (P-45) with a minimum right-of-way width of 70 feet, and with a Class III/I bikeway (PB-46) between MD 198 and the Fairland Recreational Park/Prince George's County Line. A Class I bikeway (PB-47 - Cedar Tree Drive Connector) that connects Cedar Tree Drive through Fairland Recreational Park with Robey Road is also recommended in the master plan. The existing portion of Cedar Tree Drive (between MD 198 and Islewood Terrace) is built as a two-lane Primary Road to master plan recommendations with sidewalks on both sides and a Class III bikeway.
8. Blackburn Road to the east of US 29, as a two-lane Primary Road (P-44) with a minimum right-of-way 70 feet, and with sidewalks.
9. Greencastle Road, between US 29 to the northwest and Prince George's County Line to the southeast, as a four-lane Arterial (A-110) with a minimum right-of-way width of 80 feet. The master plan also recommends sidewalks and a Class I bikeway (PB-52) along Greencastle Road between Old Columbia Pike (to the west of US 29) and Prince George's County Line. The 2005 Countywide Bikeways Functional Master Plan recommends a Dual Bikeway for the section of Greencastle Road between US 29 and Robey Road (DB-11), and a Shared-Use Path for the section of Greencastle Road between Robey Road and Prince George's County line (SP-23).

10. Peach Orchard Road (to the west of the site in Cloverly) as a two-lane Primary (P-10) between MD 198 to the north and Briggs Chaney Road to the south with a minimum right-of-way width of 70 feet, and with a Class III bikeway (PB-37).
11. Patuxent Trail, as an unpaved trail (PB-41) within the PEPCO right-of-way to the north of the site.

#### On-going Transportation Projects

The SHA Consolidated Transportation Program, and the DPWT Capital Improvement Program includes the following nearby projects:

1. The US 29/MD 198-interchange project, from north of Dustin Road to south of MD 198. Construction of this project started in June 2002 and is near completion and open to traffic. The project is scheduled for completion in Fall 2005.
2. The MD 28/MD 198 Corridor Improvement Planning Study is ongoing. SHA anticipates release of the draft environmental document for the project in Fall 2005. The study is funded for project planning only.
3. The Burtonsville Access Road project, to the north of MD 198 between MD 198 and the access road to the Burtonsville Elementary School is fully funded, and is scheduled to start construction in Spring 2007.

#### Local Area Transportation Review

Peak-hour trips associated with the proposed new shopping center consisting of 250,000 square feet of retail uses and 10,000 square feet of commercial office space were estimated for the weekday morning peak-period (6:30 a.m. to 9:30 a.m.) and the evening peak-period (4:00 p.m. to 7:00 p.m.), and (summarized in Table 1 of the Transportation Division's staff report). The net increase in trips generated by the proposed development reflect trip credits for the existing shopping center on the property that include a 50,000 square-foot retail center and a 6,000 square-foot nursery retail/outdoor furniture sales center.

Transportation Division staff concluded that the proposed retail/office density on the property was estimated to generate a total of 285 and 1,168 peak hour trips during the respective weekday morning and evening peak periods. With applicable credit for retail uses currently on the property, the proposed uses on the property were estimated to generate a total of 154 and 683 net new-peak hour trips during the respective weekday morning and evening peak periods.

- Congestion Levels at Nearby Intersections

A summary of the Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak hours during the respective peak periods based on the analysis presented in the traffic study is provided in Table 2 of the Transportation Unit Staff analysis ("Table 2").

As shown in Table 2, the weekday morning and evening peak-hour capacity analysis presented in the traffic study indicated that under Total traffic conditions (with Applicant funded intersection operational/physical improvements [potential installation of signal/turn lanes at the MD 198/Burtonsville Access Road and US 29/Site Driveway intersections] subsequent to further SHA/DPWT review), CLV at the study intersections were below the FY 2004 congestion standard for the respective policy areas. Therefore the application satisfies the LATR requirements of the APF test.

Rural policy areas such as the Patuxent Policy Area are not assigned any transportation staging ceilings. Therefore, the proposed development is not required to meet the PATR test.

## V. ENVIRONMENTAL

### A. Patuxent Primary Management Area

The Patuxent River Primary Management Area (PMA) is a water quality protection area defined in the Environmental Guidelines for land in the Patuxent River watershed. It is a set area adjacent to any stream within the Patuxent River watershed where the Guidelines recommend certain land use activities and measures as part of a development project to protect and enhance water quality conditions of the stream system. One of these measures is a 10 percent imperviousness guideline limit for lower-density land development projects within the part of the PMA that is outside any environmental buffer. Development in zones that create high impervious uses, such as commercial zones, are considered to be in "nonconformance". There is no imperviousness guideline limit in the Environmental Guidelines for development in high-density zones. However, best management practices to reduce and minimize water quality impacts are recommended

Approximately 11.1 acres of the subject site lies within the PMA. Most (8.8 acres) of the PMA is zoned RC. About 2.3 acres of the PMA is zoned C-2. The C-2 portion of the PMA is not subject to the 10 percent imperviousness guideline limit because it is considered to be a non-conforming zone.

The RC portion of the PMA is subject to the 10% imperviousness guideline limit. This part of the PMA meets that guideline limit because no impervious surfaces are proposed, except for possibly a small SWM facility access path. The path

(approximately 5720 square feet) would create about 1 percent imperviousness within the PMA.

The proposed SWM concept includes a wet pond that would provide quantity and quality controls not only for the shopping center development, but for a large portion of the adjacent elementary school (including most of the school building). The concept also includes eliminating the severely eroded channel and several dry wells located throughout the commercial part of the site. Staff believes this SWM concept meets the Environmental Guidelines recommendation for using best management practices for a commercial use (*i.e.*, high-impervious use) that lies partly within the PMA.

#### B. Forest Conservation

The Applicant proposes to retain about 4.58 acres of the 14.4 acres of forest. The retention area includes the environmental buffer and lies entirely within the PMA. The reforestation requirement is 4.80 acres, of which 1.97 acres will be located onsite. The remaining 2.83 acres of reforestation will be met offsite or with credits from a forest bank. The forest retention area and forest planting area on the site will be placed in a Category I conservation easement. Staff believes the proposed preliminary forest conservation plan meets the Forest Conservation Law requirements and recommends conditional approval of the plan.

#### VI. SCHOOLS

By letter dated January 24, 2005, Montgomery County Public Schools (MCPS) requested that the Applicant provide a vegetated buffer and construct a fence along the perimeter of the school site. The Applicant has been in contact with the school system and has advised that the area around the school will be, for the most part, afforested and protected with a forest conservation easement. Landscaping, to meet the concerns of MCPS, can be accommodated within the area identified "Proposed Landscape Buffer" adjacent to the eastern border of the school property and as shown on the preliminary plan. The Applicant has acknowledged that there will be continued discussion regarding the placement of a fence and any gates requested by MCPS.

As demonstrated in the staff report this plan complies with the recommendations of the Fairland Master Plan. Further staff believes that it complies with all applicable sections of Chapter 50, the Subdivision Regulations. The plan provides safe and adequate access, and can be served by adequate public facilities. With the waiver of setbacks that will be reviewed by MCDPS, the plan will comply with Chapter 59, the Zoning Ordinance. Staff recommends approval of the plan subject to the conditions cited above.

## VII. Public Hearing

Staff summarized its findings and recommendations in the staff report, and recommended approval of the project with conditions as revised at the time of the hearing. The Applicant appeared, represented by legal counsel, and agreed to the recommendations of staff and the proposed conditions of approval. Stuart Rochester, speaking on behalf of the Fairland Master Plan Committee, testified that there is a "wide gap" between what the Master Plan Committee envisioned for this project and what has been proposed. Mr. Rochester testified that this subject property was envisioned as part of the Fairland town center. He said that the Committee tentatively supported the waiver of the setback required for the adjoining property, zoned RC. He also said that the extension of water and sewer to the site should be granted only for the commercial portion of the site, and he supported the relocation of the stormwater management pond to allow for preservation of additional forest.

Mr. Rochester's primary concern was about the size of the proposed new buildings, and even greater concern about the possibility that the several buildings on the site could be consolidated into one, "big box" building. On the other hand, however, he noted that under the layout as proposed, the Applicant largely achieved master plan goals of a pedestrian friendly site and adequate landscaping.

Mr. Charles Peters, representing Santini Grove Property Owners Association, an adjoining residential community, testified in "vehement" opposition to the setback waiver, stating that it would allow parking on residentially zoned property. Commissioner Bryant noted on the record that commercial parking is not allowed on residentially zoned property, and this was confirmed by staff. Staff confirmed that the proposed waiver allows the new Santini Road, and parking on that road, within a 20-foot setback from the adjoining residentially-zoned property (which property is owned by the Applicant). Staff noted that where the Subject Property adjoins property not owned by the Applicant, the proposed project meets all setback requirements. Mr. Rochester confirmed that he supports the waiver only where the Subject Property adjoins land owned by the Applicant.

Cleve Brown, President of the Patuxent Watershed Protective Association, testified in opposition to the parking setback waiver. He testified that it has the effect of increasing the amount of parking, thus in effect enlarges the buildable area on the site. He said that there is an existing stormwater management problem on the site, and questioned why in the face of that fact the Board would approve additional imperviousness that would offset improvements that might be achieved with the new stormwater management facilities.

Lynn Martins, President of Seibel's Restaurant, a nearby restaurant, testified in support of the project, expressing her views that the redevelopment of this site can provide a potential boost to the business district.

During rebuttal, the Applicant noted that the Master Plan required a loop road on the adjoining property (zoned RC - Rural Cluster). By instead locating the master-planned recommended road within the Subject Property the Applicant has preserved additional green space on the adjoining property (much of which is located in a Category I conservation easement). The Applicant also noted that even with the proposed setback waiver, setbacks from the adjoining properties not owned by the Applicant are significant, being 60 feet at their narrowest and several hundred feet from existing residential properties. The Applicant also testified, in response to Planning Board questions, that if it did not get the waiver from DPS that it likely would lose density.

Commissioner Bryant asked for clarification as to whether the waiver request is typical, given the fact that the loop road is located adjacent to property under common ownership. Legal counsel testified in response to the question that it is relatively unique to have property under common ownership when this type of waiver is requested. Technical staff further advised that staff did not make an affirmative recommendation on the waiver because the Board will not grant the waiver, but instead will be reviewed by the Department of Permitting Services as part of a parking facilities plan. Technical staff also noted that the property adjoining the Subject Property never would be developed, in that it would be placed in a perpetual conservation easement. Staff further said that if the waiver is not granted by DPS, then the setback requirements must be met.

### VIII. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies<sup>1</sup>; 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. 1-04109 substantially conforms to the Fairland master plan. The Board finds persuasive the analysis presented by staff that the density, vehicular and circulation patterns, and landscaping requirements as conditioned below, conform to the general recommendations of the Master Plan.
- b) The uncontested evidence of record demonstrates that public facilities will be adequate to support and service the area of the proposed subdivision, and the record confirms that the water/sewer category change is limited to the commercial portion of the site only.

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<sup>1</sup> 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.

- c) The uncontested evidence of record demonstrates that the size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) 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.
- e) 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.
- f) Aside from the issue of the waiver (over which the Board has no jurisdiction) and conformance to the master plan, the Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning additional substantive issue in this application, is waived.

#### IX. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04109 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04109, subject to the following conditions:

- 1) Limit redevelopment on the property as part of this preliminary plan to a shopping center consisting of 250,000 square feet of retail space and 10,000 square feet of commercial office space.
- 2) Consistent with the 1997 Approved and Adopted *Fairland Master Plan*, dedicate and show on the final record plat, ~~right-of-way width at the subject property's frontage along:~~
  - a. US 29 (Burtonsville Boulevard) to provide a minimum of ~~50-100~~100 feet from the roadway centerline or a minimum of 100-200 feet from the established opposite right-of-way line, as determined by M-NCPPC and SHA.
  - b. Spencerville Road to provide a minimum of 60 feet from the roadway centerline or a minimum of 120 feet from the established opposite right-of-way line, as determined by M-NCPPC and SHA.
  - c. Burtonsville Access Road to provide up to 60 feet of right-of-way width as determined by MNCPPC and DPWT.



The final record plat shall also reflect dedication of necessary truncation at intersection corners.

- 3) The Applicant shall resolve all outstanding issues and satisfy all conditions/comments pertaining to the Montgomery County Department of Public Works and Transportation (DPWT) approval letter dated July 21, 2005, (Attachment A) and shall provide written notification to both the Development Review Division and the Transportation Planning staff prior to the final record plat that all outstanding issues are resolved.
- 4) Satisfy all preliminary plan conditions included in the State Highway Administration (SHA) letter dated June 7, 2005. (Attachment B) All roadway/intersection improvements required by SHA shall be installed/constructed and in place prior to the release of any building permit associated with this preliminary plan.
- 5) Complete required traffic signal warrant studies. If approved by SHA, design/install a fully operational traffic signal at Applicant's expense at:
  - a. the site access driveway intersection with the local lanes of US 29
  - b. the Burtonsville Access Road intersection with MD 198.

The timing for the installation for these signals shall be coordinated as required by SHA and DPWT.

- 6) All SHA and DPWT site frontage, site access and roadway/intersection improvement design concerns related to this development shall be addressed fully to the satisfaction of the respective agencies prior to the final record plat. Any physical improvement along the proposed alignment for Burtonsville Access Road shall conform to applicable DPWT design for the roadway.
- 7) Construct an eight-foot-wide shared-use path and an eight-foot-wide tree panel on US 29 (Burtonsville Boulevard) along the entire property frontage. Extend this shared-use path and tree panel further north from the property line to the PEPCO power line right-of-way (or to the Patuxent Trail [PB-41]). The shared-use path shall be offset two feet from the property line.
- 8) Construct a five-foot wide sidewalk and an eight-foot tree panel on MD 198 along the entire property frontage. The sidewalk shall be offset two feet from the property line.

- 9) Manage all shopping center related vehicular traffic, queues and parking within the property without spillover to US 29, MD 198, and Burtonsville Access Road.
- 10) All on- and off-site sidewalk/shared-use path ramps and crosswalks shall conform to Americans with Disabilities Act (ADA) standards.
- 11) The development on the site shall have adequate lead-in sidewalks from US 29, MD 198, and Burtonsville Access Road.
- 12) The development on the site shall have a pedestrian friendly internal street network, which will be in substantial conformance with the Fairland Master Plan guidelines, and shall meet the minimum requirements for the internal streetscape/sidewalks as required by the Building Officials and Code Administrators International Code used for Montgomery County.
- 13) 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, including:
  - b. 2.83 acres of offsite reforestation or forest bank to be identified by Applicant and approved by M-NCPPC staff prior to approval of record plat.
  - c. Final forest conservation plan to include a reconfiguration of the proposed SWM pond to provide more forest retention near the northern part of the pond, if feasible *and to locate a pathway from school site to shopping center access road in coordination with MCPS*. If additional forest retention is not feasible, provide documentation to demonstrate why the additional retention is not feasible.
  - d. Applicant to provide landscaping *and fencing* in consultation with MNCPPC staff and MCPS staff for perimeter of adjacent school site.
- 14) Applicant is bound to the elements of the Illustrative Circulation Plan dated June 2004, regarding general street cross sections, sidewalks locations, sidewalk widths, sidewalk amenities, street trees and crosswalk treatment.
- 15) Obtain a waiver of the setbacks from MCDPS for parking facilities along the zoning line immediately to the west of the proposed shopping center prior to building permits. If a waiver cannot be secured, parking

facilities must comply with setbacks as per Section 59-E-2.81 of the Zoning Ordinance.

- 16) Compliance with the conditions of the MCDPS stormwater management approval dated ~~July 13~~ June 2, 2005.
- 17) 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.
- 18) Other necessary easements.
- 19) Record plat to reflect a Category I conservation easement on all stream valley buffers and areas of forest conservation and afforestation.

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]

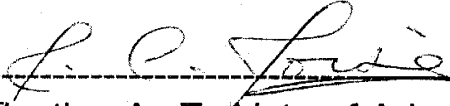
Approved:  
M-NCPPC

*MF 3/13/06*

Efficiency  
Counsel

**CERTIFICATION OF BOARD VOTE ADOPTING OPINION**

At its regular meeting, held on **Thursday, March 16, 2006**, 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 **Preliminary Plan No. 1-04109, Burtonsville Shopping Center.**

  
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Certification As To Vote of Adoption  
M. Clara Moise, Technical Writer



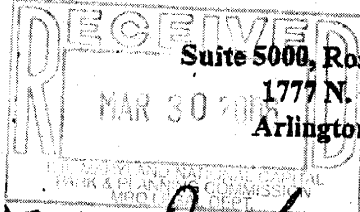
FAX COVER SHEET

RECEIVED  
MAR 28 2006

Historical Office  
Office of the Secretary of Defense

Suite 5000, Rosslyn Plaza North  
1777 N. Kent Street  
Arlington, VA 22209-2165

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION



TO: Chairman Dorck Beloge (10) pages

FAX NUMBER: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

MESSAGE: Dorck

CAC request for re-review of the  
Burtonsville Slippy Ctr. Preliminary Plan record of  
opinion is attached.

Stuart

FROM: Stuart I. Rochester

DATE: 3/27/06

PHONE: 703-588-7876

PAGES: 10  
(including cover sheet)

FAX: 703-588-7572

E-MAIL: stuart.rochester@osd.mil

FAIRLAND MASTER PLAN CITIZENS ADVISORY COMMITTEE  
2901 Greencastle Road Burtonsville MD 20866

March 24, 2006

Mr. Derick Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring MD 20910

**RE: Request for Planning Board Review of Matters Relating to Corrected Opinion and Preliminary Plan 1-04109 (Burtonsville Shopping Center)**

Dear Chairman Berlage:

Thank you for receipt of the March 21 "corrected" opinion in the case of Preliminary Plan 1-04109 (Burtonsville Shopping Center). The Fairland Master Plan Citizens Advisory Committee, on behalf of other parties of record as well, including the Patuxent Watershed Protective Association and the Santini Road Property Owners Association (incorrectly identified as Santini Grove even in the corrected opinion), is exercising its right to request a new hearing or at least a review of several points either incorrectly or inadequately represented in the opinion record besides the two technical changes made on pages 10 and 13. Finding (f) on page 10 provides grounds for such a review based on the two issues (waiver and master plan conformance) cited as contested issues on which substantive questions may be raised subsequent to the original opinion.

Some further technical corrections need to be made for simple accuracy sake: the proper identification of the name of the Santini Road residents cited above, and on page 8, where the record reads "Mr. Rochester testified that this subject property was envisioned as part of the Fairland town center," in fact the reference should be to a Burtonsville town center. There are also misspellings, e.g., "pursuasive" on page 9.

However, the purpose of this appeal bears on the two substantive issues in question:

1) Master Plan Conformance

The page 9, VIII(a) finding of master plan conformance depends to a significant degree on the language of Conditions 12 and 14, which in the aftermath of the Board's decision has the applicants, staff, and even the Planning Board Chair making different statements and representations as to how prescriptive and enforceable those conditions are and even what they mean. Indeed, the applicant, immediately following the Board's issuance of its original opinion, felt free to repudiate the very basis for his density and semblance of master plan conformance in the plan shown the community and the Board—see attached Attachment A page 2 of Dugan Feb. 7 letter to DPS and Fairland CAC Mar. 23 letter to DPS Director Robert Hubbard. That Planning Staff and Board seem unable or unwilling to address the applicant's ability to literally disregard the existing language in the record of opinion indicates plainly a need to incorporate some additional qualifying or clarifying language

to prevent an egregious loophole or circumvention of the Board's intent and to elucidate what evidently is not common enough understanding of the English-language usage of the words "bound" and "substantial conformance."

If "substantial master plan conformance" is not spelled out, the result is not just semantic confusion and ambiguity but the potential for serious unintended consequences, where requirements in the report presume different conditions (based on master plan expectations) than those that may subsequently apply. To cite but one example, Condition 13c. contains a requirement "to locate a pathway from school site to shopping center access road," a peculiar stipulation that may have presumed the benefit of connecting the elementary school to a neighborhood center. While some might question the wisdom of that idea under any circumstances, such a requirement becomes absolutely perverse, and downright dangerous, from a child safety and vulnerability standpoint, if instead of the neighborhood center concept in the master plan of which the school was construed as an integral part, the elementary school instead finds itself next door to a regional, transient, auto-dependent big box store.

The simple remedy is to add language to Condition 12, line 3, to state "Fairland Master Plan guidelines *that call for a neighborhood retail center . . .*" If there is any doubt what the Master Plan explicitly says on the subject, see attached pp. xiv-xvi of the — Attached B 1997 Fairland Master Plan document that specify **repeatedly neighborhood** retail on the Burtonsville site, as contrasted with bullet 7 on p. xiv that identifies where *regional* retail is supposed to occur in the planning area.

## 2) Waiver

This issue alone renders the hearing record fundamentally flawed. The record is replete with references to a waiver request that was a key point of discussion and indeed a condition of approval but that proved to be a presumptive error. That the mistaken assumption remains sprinkled throughout a "corrected" opinion is inexcusable and speaks volumes about the greater interest in expediency than in the integrity and accuracy of an official document of record.

More significant yet, the applicant's proposal and staff's embrace of the waiver mechanism to address setbacks (and the Board's decision based on the misinformation to simply hand off the matter to the Department of Permitting Services, which has jurisdiction over such waivers) effectively prevented further consideration by the Board of important setback concerns relative to the elementary school and watershed—which, as it turns out, may not get discussed at DPS either because it has said the Zoning Ordinance cited in the Planning Board opinion is silent on the issue and the supposed compliance requirement does not exist!

Given the absence of a site plan requirement in the C-2 zone, it is all the more imperative that maximum care, clarity, and accuracy be achieved in the record of opinion of a preliminary plan for this zone. In my testimony before the Board during the preliminary plan hearing on July 28, 2005, you may remember (or you may check the hearing record) I said: **"Insofar as this proposal evidently will not go to site plan, and given the extraordinary importance of the site, with far-ranging impacts on the elementary**

**school, the Patuxent Watershed, and other retail in the area, as well as the surrounding residential community, it is all the more imperative that the Board give the plan careful scrutiny at this point in the process, which may be the only occasion to review it.** Like Katrina, this was a disaster that was not only predictable, but predicted.

Where do we go from here? You have indicated to Delegate Karen Montgomery and others that you are relying on passage of ZTA 6-05 to address the problems of the C-2 zone, including concerns that citizens have raised about this case. And to the Planning Board's credit, it has firmly supported the proposal of a site plan requirement in the C-2 zone. We all hope that Councilmember Praisner will be successful in her effort to secure County Council approval of this much needed zoning text amendment. **However, if it does not pass, and its prospects for now appear uncertain, or for that matter if the subject property is grandfathered in any new legislation, the Board will have the burden of maintaining the integrity of the planning process in this instance within the existing procedures and regulations.**

We believe the Board has the opportunity, and indeed the responsibility, given the errors, discrepancies, and deficiencies that inhere in the opinion and that are cited above, to address and fix the problem(s) NOW in a timely and appropriate review of the original record. But in any event, even if the case gets bumped along to DPS and to building permit review, the Planning Board and Staff will inevitably have an ongoing role and key input in interpreting and conveying just what your opinion and conditions mean and require. In that event, the Master Plan committee, and the several impacted parties of record, and citizens everywhere concerned about the integrity of process, particularly in the wake of Clarksburg and the Board's expressed commitment to greater scrutiny and rigor, will be looking for assurance that plans proffered the community and Planning Department in order to secure approval—whether in a C-2 zone or in a residential zone, whether in the case of a site plan requirement or conditions of approval in a sole preliminary plan requirement—can not be transparently flouted if citizens are to have any confidence in your or any other County planning administration. Fix it now or fix it later. But at the end of the day this episode will be a notable success, or a shameful embarrassment as well as a planning disaster for the East County.

Please share this letter with your colleagues and please let the CAC know the Board's decision.

Sincerely,

  
Stuart Rochester

Chairman, Fairland Master Plan CAC

cc. Councilmember Marilyn Praisner  
Michelle Rosenfeld, M-NCPPC



1) Waiver Request

The Petitioner requests a complete waiver from the parking, driveway, landscaping and screening setback requirements (i.e., a zero setback) along the entire interior split zoning line as depicted in red and described in the Notes on the Illustrative Plan (the "Plan") which is submitted as part of this Petition. The waiver would exempt the areas shown in red from all of the referenced setback requirements, regardless of whether such areas are or may become front, side or rear yards. No waiver from any common property line with adjoining properties is being sought. As explained at Section 4), the C-2 zone, rather than the RC zone, setback standards apply. Nonetheless, regardless which zone's standards apply, the Petitioner's request for a zero setback is the same.

The Petitioner requests the waiver to: (1) best address the practical circumstances underlying the use of the property as a retail center in the Burtonsville area; and (2) to best utilize the C-2 zoned land's shape.

In the Burtonsville area, multi-story retail buildings and structured parking are not possible. In all likelihood, the stores will be one (or at most two) story structures. The businesses and the shoppers will depend upon surface parking so that coming and going is perceived to be safe and convenient. Thus, the center will be predominantly horizontal. Using the surface area of the C-2 zoned land most efficiently will be critical.

Avoiding unnecessary and wasteful use of the horizontal plane is the purpose of the waiver application. Setbacks are unnecessary, and should be avoided, in areas between the zoning line and the property line, where: (1) significant distances exist between the adjoining uses and the C-2 zoned land; and/or (2) the areas between the zoning line and the property line are already wooded and will be subject to permanent conservation easements. (In the one area not as wooded, but wooded nonetheless along its perimeter -- the northeasterly corner of the property zoned RC -- the waiver is proper because it is so wooded, and it will not be used for residential purposes, in the long term.<sup>2</sup>) Further if setbacks were also imposed along the irregularly curved RC/C-2 zoning line<sup>3</sup> in the rear, the arching shape, plus setbacks, would cause a ripple

<sup>2</sup> An existing residence is being rented by a couple who sold the property to the Petitioner. They have plans to leave in the near future. The property is not intended to be used for residential purposes in the long term.

<sup>3</sup> The split zoning line shows one of the Master Plan's alternative alignments for the loop road. The chosen loop road will be located elsewhere. It is now referred to as the "Burtonsville Access Road." It is planned to run generally between the stores fronting on Rte. 198 and the Burtonsville Elementary School, and to cut across a portion of the Petitioner's property near Rte. 198. The zoning line around the rear of the center is curved, because such loop road alternative would have had to accommodate the curve of a vehicle's turn, at a certain speed. If the loop road had run behind the center, it would have been a public right of way. Also, it would have been constructed on the RC zoned land, just outside of the C-2 zoned land. The Master Plan recommended that it be located there: "Add a loop road adjacent to the outer perimeter of the new C-2 zoned land in the rear of the center generally running from the southwestern corner of the site and exiting at US 29." (Please the Fairland Master Plan at page 72.) Accordingly, the Petitioner would have then used the loop road for its rear access. Consequently, the lack (cont'd)

FAIRLAND MASTER PLAN CITIZENS ADVISORY COMMITTEE  
2901 Greencastle Road     Burtonsville MD 20866

March 23, 2006

Mr. Robert C. Hubbard  
Director, Department of Permitting Services  
255 Rockville Pike, 2nd Floor  
Rockville MD 20850-4166

Dear Mr. Hubbard:

Thank you for your letter of March 3 updating the Fairland Master Plan Committee on the Burtonsville Shopping Center Petition for a Setback Waiver. The Master Plan Committee, and the many interests—including the Burtonsville Elementary School adjacent to the shopping center and the Patuxent Watershed Protective Association—impacted by and closely following this case greatly appreciate the care and scrutiny thus far exhibited by the Department of Permitting Services in the handling of the several issues relating to this problematic site.

This letter is to remind DPS of the importance of the **parking facility** matter in particular, whether a setback waiver is involved or not (as you know, there has been considerable misinformation and confusion regarding the latter). The shopping center owner has received preliminary plan approval with density (capacity) based on his showing **structured parking** in his plan. Without that structured parking, especially with the larger box he has in mind, upwards of 1,000 or more parking spaces would spill onto the site, thus dramatically reducing and perhaps rendering physically impossible the other elements shown in his plan that enable him to fulfill the condition of "substantial master plan conformance" and that contributed to approval of the plan by the Planning Board (and indeed its support by the Master Plan Committee). Incredibly, in Mr. Jones's attorney's February 7, 2006 request to your office for a parking facility setback waiver, on page 2 (see attachment) he incidentally states "*in the Burtonsville area, multi-story buildings and structured parking are not possible.*" The letter thus directly contradicts a key element that he showed in his plan before the Planning Board to support his density and ability to meet the conditions of approval, including a pedestrian-friendly center and substantial conformance to master plan guidelines. We find this deeply troubling.

Having jurisdiction over the parking facility review as well as any waiver petition, your Department, we trust, will hold the applicant to the plan upon which his approval was based. We wish to receive timely notification by DPS of its review of the developer's parking facility plan, which we understand occurs prior to building permit. We and our residents, who are concerned about so many aspects of what appears to be a classic "bait and switch" attempt, will look to DPS to enforce the plan proffered the community and the Planning Board and to not allow a transparent flouting of the integrity of the planning and permitting processes.