

Sincerely,


Stuart Rochester

Chairman, Fairland Master Plan CAC

- cc. Councilmember Marilyn Praisner
- Councilmember Steve Silverman
- Councilmember Nancy Floreen
- Derick Berlage, Chairman, Montgomery County Planning Board
- Richard Weaver, M-NCPPC
- Michelle Rosenfeld, M-NCPPC

PLAN HIGHLIGHTS

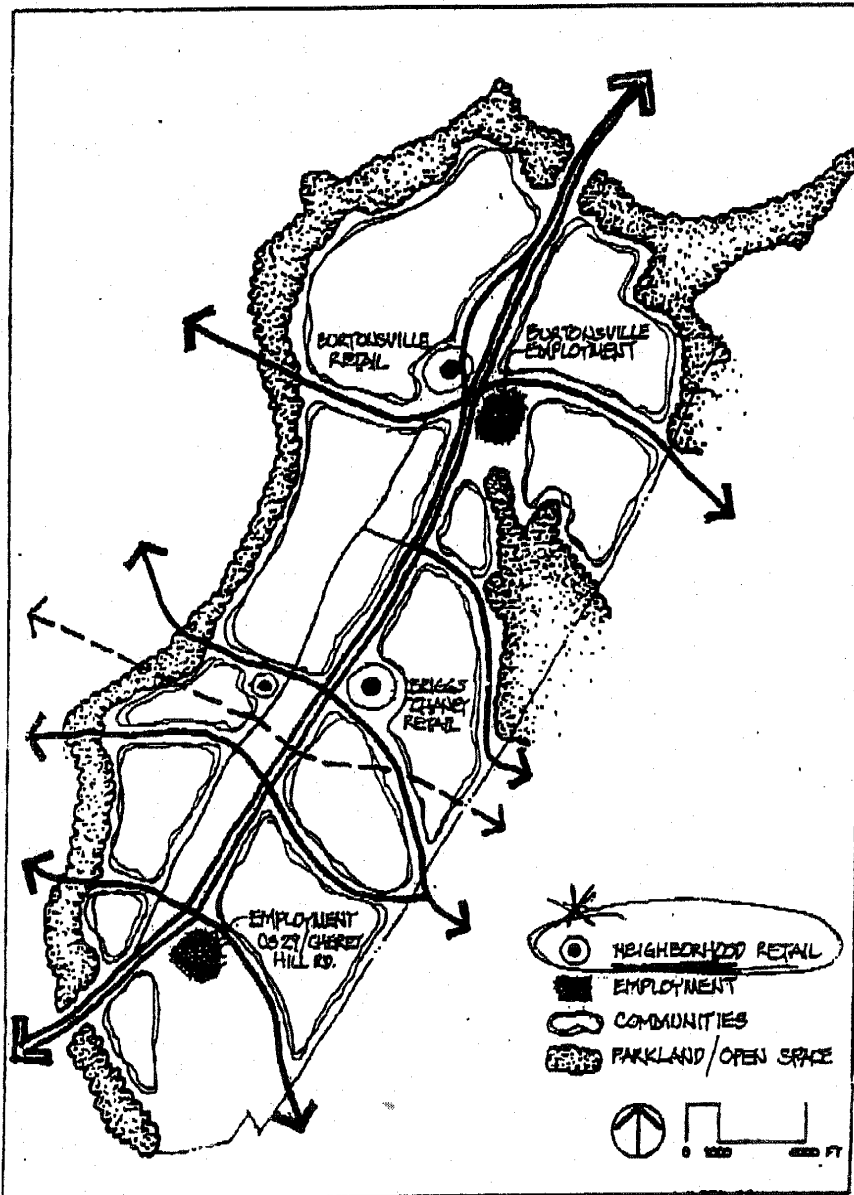
COMMUNITIES AND CENTERS

This Master Plan reinforces the existing development patterns in the Fairland Master Plan area with appropriate adjustments based on the 1993 General Plan Refinement and the goal of balancing land use against available facilities and infrastructure.

The Fairland Master Plan has community building as one of its key components; recognizing and reinforcing each community's unique character and identity and ensuring that local centers serving the communities are attractive, functional, safe, and accessible. The communities of Fairland are composed of new neighborhoods adjacent to mature neighborhoods, served by local shopping, schools, public services, and parks. The Fairland Master Plan implements the policies of the General Plan Refinement, which identified the Fairland Master Plan area as primarily residential in nature and within the Suburban Communities and the Residential Wedge.

This Plan:

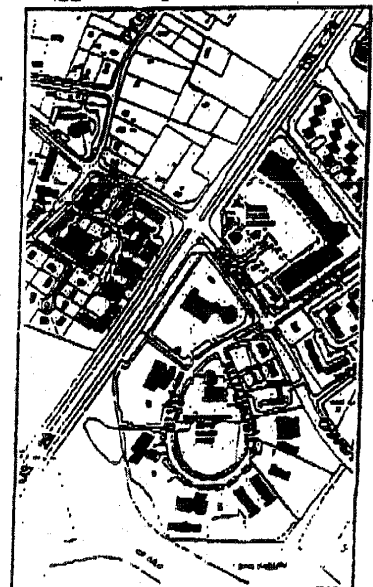
- Increases the potential for a greater percentage of single-family detached homes in undeveloped or underdeveloped areas within Fairland while maintaining a mix of housing types.
- Recommends a golf course community that straddles the Montgomery and Prince George's Counties' boundary and incorporates the revitalization of the public Gunpowder Golf Course, located off Gunpowder Road.
- Recommends redevelopment of the Great Oaks site with an institutional use or as a residential subdivision by using Transfer of Development Rights (TDRs).
- Removes TDR development options wherever environmental and access constraints limit using increased densities.
- Recommends streetscaping and sidewalk improvements in the Briggs Chaney Road and Burtonsville neighborhood retail areas.
- Recommends overlay districts to encourage diversification of uses in the US 29/Cherry Hill Road Employment Area and to provide opportunities for redevelopment in the Burtonsville Industrial Area.
- Recommends a new low-intensity regional shopping center in a 42-acre portion of the West*Farm Technology Park.
- Recommends sidewalk, trail, and roadway connections between new and existing communities.



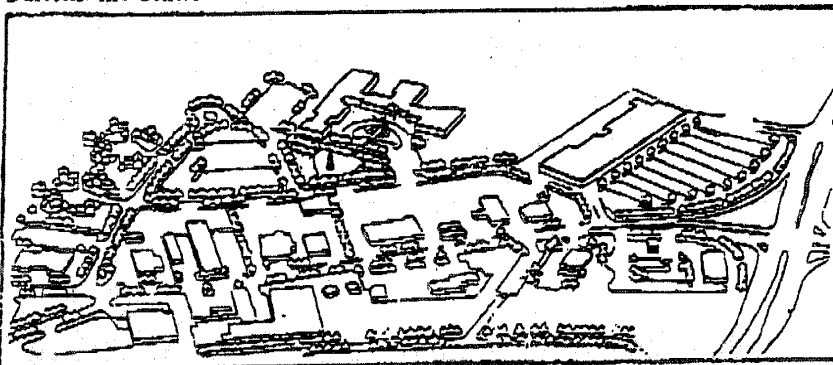
Golf Course Community



Briggs Chaney Center



Burtonsville Center



The Fairland Master Plan recommends enhancing mobility and transportation system with a wide range of alternatives.

The Plan identifies right-of-way for grade-separated interchange improvements on US 29 and gives priority to east-west travel. The Plan underscores the need for pedestrian safety and access to local facilities and recommends a number of sidewalk improvements in commercial centers, in the residential communities, and along the major roads. Emphasis is placed on safe and attractive transportation improvements that enhance local circulation while improving all modes of travel within and through the communities and centers of Fairland.

This Plan:

- Recommends grade-separated interchanges for all east-west crossings of US 29 and the need to reserve right-of-way for all improvements.
- Provides improved traffic circulation for through and local traffic.
- Recommends a rear access road in the Burtonsville neighborhood retail area to improve circulation along MD 198.
- Recommends improved access to the Burtonsville Elementary School.
- Recommends streetseaping, sidewalks, and pedestrian crossings in the Briggs Chaney Road and Burtonsville neighborhood retail areas.
- Recommends extension of existing local and regional bus service.
- Recommends a Transportation Demand Management Program to encourage transportation alternatives to the single-occupancy automobile, including car pooling and mass transit.
- Provides a safe and convenient bikeway network that connects to local community centers, services, and recreational facilities and expands commuting opportunities for biking.
- Expands the system of sidewalks and walkways to improve access to public transit, commercial centers, schools, parks, and places of employment.

March 30, 2006

Mr. Derrick Berlage
Chairman, Montgomery County Planning Board
M.N.C.P.P.C.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Mr. Berlage,

I write on behalf of the Patuxent Watershed Protective Association, Inc., a party of record in the case of Preliminary Plan 1-04109 (Burtonsville Shopping Center).

The petitioner's application included a request for a "waiver" of the setback requirement. The Board must have agreed with the need for a waiver because much of the testimony and discussion centered on that issue. It was my main concern. I am now told there is uncertainty about the requirement. Enclosed for quick reference is a copy of a March 17 letter to Ms. Michelle Rosenfeld (cc: Mr. Derrick Berlage) outlining my futile attempt to get answers to a couple of seemingly simple questions. Now I face the deadline for response to the "corrected" Opinion in this case and still have no confidence that the setback question has been adequately addressed.

Therefore, I respectfully request a rehearing of this matter if that is what it takes to inform concerned citizens of what to expect and to create a record that is factual and unambiguous.

Thank you for your consideration.

Sincerely,

A. Cleveland Brown, V.M.D.
President, Patuxent
Watershed Protective
Association, Inc.

Enclosure

ATTACHMENT FIVE

March 17, 2006

Ms. Michelle Rosenfeld
Legal Counsel
Montgomery County Planning Board
M.N.C.P.P.C
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Ms. Rosenfeld,

On February 14, at 1:30 PM, I met with you and others at the Planning Board offices as a person of record in the matter of the Burtonsville Shopping Center Case. At that time, you agreed to send me copies of law defining the difference between a "waiver" and a "variance." To date, I have not received same. Oversights happen and I assume that to be the case.

Additionally, I ask that you also inform me of the "setback" requirements in the above cited case and the law pertinent to those setback requirements.

If there are problems responding to my requests, please advise me.

Thanks for your consideration.

Sincerely,

A. Cleveland Brown, V.M.D.

cc: Mr. Derrick Berlage
Chairman, Montgomery County Planning Board
M.N.C.P.P.C.
8787 Georgia Avenue
Silver Spring, MD 20910-3760

**SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.**

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Karl L. Ecker[†]
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David D. Freishtat
Martin P. Schaffer
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Robert B. Canter
Daniel S. Krakower
Kevin P. Kennedy
Nancy P. Regelin
Samuel M. Spiritos⁺
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June 23, 2006

Hand Delivered

The Honorable Derick P. Berlage, Chairman
Members of the Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

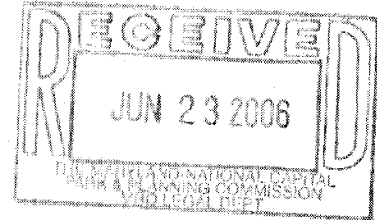
Re: Preliminary Plan 1-04109
(Burtonsville Shopping Center)
Opposition to Requests for Review

Dear Chairman Berlage and Members of the Board:

On behalf of our client BMC Property Group ("BMC"), we oppose the March 24, 2006 request of Mr. Stuart Rochester¹ and the March 30, 2006 request of Mr. A. Cleveland Brown² for further review of Preliminary Plan 1-04109. By Corrected Opinion, mailed March 21, 2006, the Planning Board corrected its December 19, 2005 final Preliminary Plan Opinion to address two minor technical items – right of way dimensions and the date of a referenced letter. Neither correction is raised as grounds for reconsideration in either letter. Rather, Mr. Rochester and Mr. Brown appear to be using the corrections as a pretext for reopening the entire application to re-argue issues that are not new.

¹ Mr. Rochester's letter is captioned as "Request for Planning Board Review of Matters Relating to Corrected Opinion and Preliminary Plan 1-04109." Mr. Rochester is Chairman of the Fairland Master Plan Citizens Advisory Committee.

² Mr. Brown's letter has no caption or letterhead, but states that it is submitted "on behalf of the Patuxent Watershed Protective Association, Inc."



Both Mr. Rochester and Mr. Brown failed to file a request for reconsideration of the Planning Board's Opinion that was mailed on December 19, 2005. At most, through their recent letters, they could have asked the Planning Board to reconsider its two technical corrections, but they did not. The time has long since passed to request reconsideration of the Opinion. Accordingly, we respectfully recommend that their requests be rejected. A fuller discussion of our position follows.

As addressed in detail in Section 4 of this letter, even if their complaints were not time-barred, they have failed to show any good cause or to explain how their assertions are somehow materially different from the evidence provided during the proceedings. (See, Planning Board Rules of Procedure, p. 5, Sec. 11-A(2)). Further, even if they had provided such information in their letters, "the fact that a party raises an issue worthy of reconsideration does not itself require the Board to reconsider a prior action." (See, Planning Board Rules of Procedure, p. 5, Sec 11-A).

Finally, based on the Record in the instant case, the Board itself should not find any reason, on its own accord, to reopen its decision. Section VIII, f), p. 10, of both the final Opinion and the Corrected Opinion should not be upended. Both of these provisions read as follows:

Aside from the issue of the [parking and driveway setback] 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. (Emphasis added.)

1) Background

A chronology of relevant dates and actions relating to the approval of Preliminary Plan No. 1-04109 ("Preliminary Plan") is as follows:

1. 7/22/2005 - Planning Board Staff Report.
2. 7/28/2005 - Public hearing and Planning Board's unanimous approval.
3. 12/19/2005 - Planning Board Opinion mailing date.
4. 3/16/2006 - Planning Board unanimously adopts the Corrected Opinion.
5. 3/21/2006 - Planning Board Corrected Opinion mailing date (the "Corrected Opinion").
6. 3/24/2006 - "Request for Review" letter by Mr. Rochester, stamped received by the Planning Board on 3/28/2006.

7. 3/30/2006 - Letter by Mr. Brown representing the Patuxent Watershed Protective Association, Inc. (We do not know the date of receipt by the Planning Board).

The Corrected Opinion contained two changes to its Conditions of Approval:

(a) Condition No. 2 (Op., p. 10); and (b) Condition No. 16 (Op., p.13). The corrections were as follows:

First correction:

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;⁵
- b. 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.
- e. c. Burtonsville Access Road to provide up to 60 feet of right-of-way width as determined by M-NCPPC and DPWT.

Second correction:

- 16) Compliance with the conditions of the MCDPS stormwater management approval dated ~~July 13~~ June 2, 2005.

2) The Approved Preliminary Plan Is Beyond The Time Limitation For Reconsideration Based on the Record

The alleged rights of Mr. Rochester and Mr. Brown to request, in essence, the Board's full re-review of its final decision have long since expired. The Opinion was mailed on December 19, 2005. It was the Planning Board's final decision. It was subject to a request for reconsideration for a period of 10 days after its mailing.³ Additionally, "A request for reconsideration shall not operate to extend any appeals times provided by applicable law."⁴ The two (2) minor technical changes reflected in the Board's Corrected Opinion have not been challenged and would not merit Board reconsideration. Thus, the reconsideration requests of Messrs. Rochester and Brown are time-barred.

³ See, Board's Rules of Procedure (Revised January 13, 2005), p. 5, Sec. 11-A "Reconsideration."

⁴ See, Planning Board's Rules of Procedure (Revised January 13, 2005, p. 5, Sec. 11-D).

3) If Any Review Is Allowed, It Is Limited To The Two Minor Modifications Made In The Corrected Opinion

Assuming, for the sake of argument, that the Planning Board chooses to accept either reconsideration request under the current circumstances, for the reasons discussed above, the reconsideration would be limited to the two technical corrections. (Yet, in Mr. Rochester's own letter, he concedes that the changes were mere "technical changes.") Neither Mr. Rochester nor Mr. Brown raised any objection to the two corrections. Consequently, they have raised no issues that are still subject to Board reconsideration.

This interpretation was affirmed in Nutter v. City of Baltimore, 230 Md. 6, 185 A. 2d 360 (1962) wherein, the Court of Appeals stated:

... an appeal or attempted appeal from subsequent action of the Board, even though related to the original action sought to be reviewed, will lie only as to the validity of the subsequent action and not relate or reach back to the original action.
(Emphasis added.)

Id. at 364, citing Maryland Clothing Manufacturing v. Baltimore, 207 Md. 165, 113 A. 2d 743; Fleischer v. Murdock Sup., 62 N.Y.S. 2d 417; Hempstead v. Board of Zoning Appeals of Town of Hempstead, 245. App. Div. 750, 280 N.Y.S. 448.

To allow the Board's final findings, conclusions and conditions to be resurrected for scrutiny some six (6) months after their finality would make a mockery of the Planning Board's Rules and Maryland Rules for concluding an administrative preliminary plan of subdivision proceeding. In essence, it would undermine the ability to make timely technical corrections to a Board Opinion for fear of reopening an entire matter to review.

Thus, from the standpoint of Maryland jurisprudence, due process, and simple fairness, the Planning Board must find the requests for reconsideration untenable.

4) All Issues Raised By Mr. Rochester and Mr. Brown Have Been Fully and Fairly Vetted

Section 11-A of the Planning Board's Rules of Procedure (as Revised January 13, 2005) provides,

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 final decision. The Board may review a request to reconsider, provided sufficient grounds are demonstrated...

* * *

The fact that a party raises an issue worthy of reconsideration does not itself require the Board to reconsider a prior action.

Neither gentleman contests what Mr. Rochester expressly refers to as the "technical changes," that were made to Conditions No. 2 and No. 16 in the Corrected Opinion. Rather, they seek to have the Board revisit its unchanged and final (and thus beyond reconsideration) determinations on other matters. In effect, they are seeking another bite at the subdivision apple to which they are not entitled.

Mr. Rochester asks the Board to review two (2) issues: (1) Master Plan Conformance; and (2) Setback waiver as being contrary to finding VIII (f) in the Opinion (and as unchanged in the Corrected Opinion). Specifically, he cites concerns with language contained in the Board's Finding VIII(a) as it may relate to Conditions No. 12, 13(c) and No. 14. The relief he seeks is to change the language of Condition No. 12, line 3 to state, "which will be in substantial conformance with the Fairland Master Plan guidelines that call for a neighborhood retail center..." as a way of clarifying, after the fact, what he posits to be the proper interpretation of the Fairland Master Plan and what the Board meant in its findings and conditions when referring to "substantial conformance" to the Fairland Master Plan. Clearly, such further action by the Board is no longer permissible.

As noted, Mr. Brown states that there is uncertainty about the need for a setback waiver and concludes by requesting a "rehearing of this matter." Once again, the request for rehearing of the Preliminary Plan is now well beyond the Board's jurisdiction, even assuming that the setback waiver was within the Board's jurisdiction, which it is not.

a) Master Plan Conformance.

Mr. Rochester wants the Board's Condition No. 12 to be changed to state "Fairland Master Plan guidelines that call for a neighborhood retail center." However, in accordance with the recommendations of the Master Plan, the Shopping Center zoning was reaffirmed and the C-2 zoned area was expanded. The C-2 zone is the "General Commercial" zone classification. It is not the neighborhood retail zoning classification. Despite the C-2 zoning designation, Mr. Rochester would have redevelopment of the property, through interpretation of the interrelationship between the Master Plan and the Zoning Ordinance, restricted to the "Convenience Commercial" uses of the C-1 zone.

The Purpose Clause of the C-2 zone expressly permits, "general commercial uses representing various types of retail trades, businesses and services for a regional or local area." (See, Sec. 59-C-4.350), (Emphasis added). In contrast, the Purpose Clause of the C-1 zone states that it is "to provide locations for convenience shopping facilities in which are found retail commercial uses which have a neighborhood orientation and which supply necessities usually requiring frequent purchasing with a minimum of consumer travel." (See, Sec. 59-C-4.340), (Emphasis added.)

Having legislatively zoned the property C-2, the use cannot be administratively restricted to preclude development and uses expressly allowed in that zone. As held in Board of County Commissioners of Washington County v. H. Manny Holtz, 65 Md. App. 574, 501 A. 2d 489 at 493 (1985), even where conditional zoning is allowed by statute (which is not the case in Montgomery County), limitation or restriction of the uses permitted on a tract of land within a given zone violates uniformity requirements and is "a usurpation of the legislative function." (See also, Mayor and Council of Rockville v. Rylyns Enterprises, 372 Md. 514, 814 A. 2d 469 (2002)).

b) Clear Representation that Building Footprints Were Illustrative

That the building layout is conceptual is consistent with Section 50-34(e)(1) of the Subdivision Ordinance which expressly provides that shopping centers and other enumerated uses "...shall be indicated for such use on the preliminary plan, together with scaled dimensions and approximate area of each site. Nothing herein shall be construed to limit actual development to such uses." (Emphasis added.)

Consistent with Sec. 50-34(e)(1), the July 22, 2005 Staff Report states, "staff did request and receive an Illustrative Circulation Plan . . ." and "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." (Emphasis added), (Staff Report, p. 4.) Attachment "C" to the Staff Report (the Community-based Planning Report from Ms. Piera Weiss) states at p. 2 thereof that, "the applicant has stated during various meetings with staff and the public that the layout is conceptual and may not be built exactly as shown." (Emphasis added.)

Further, as gleaned from the audio tape of the Board's July 28, 2005 preliminary plan public hearing and the unofficial written transcript of the proceedings dated April 5, 2006 prepared by Deposition Services, Inc. of Rockville, Maryland, (attached as Exhibit 1), there were at least seven (7) separate confirmations by Staff, Board members and the Applicant that the proposed preliminary plan concept for the arrangement of the buildings was conceptual and subject to change, including the supporting parking. These statements are quoted below.

- a) TR., p. 4 – Mr. Weaver (Staff): “This is a Preliminary Plan Review. This is the only review that the Board will have. This will not proceed to the Site Plan stage. And as you may know, we do what we can at Preliminary Plan. We’re really looking at setting the APF review, transportation review, we’re looking at the access points, we’re looking at setting the square footage, and we’ve done what we can with this Preliminary Plan.... Given our limited review, what we managed to do was have the applicant come up with this illustrative circulation plan.”
- b) TR., p. 7 – Mr. Weaver (Staff): “And again, we are at Preliminary Plan. The layout of this site could change...”
- c) TR., p. 31 – Commissioner Bryant: “Also, would you [Staff] respond to the point of clarification that in light of the fact that this is illustrative, and that also is under the control of the applicant, that those buildings can be re-sited, they can be reduced in size, or they can be reconfigured so that you still get the same total square footage...”
- d) TR., p. 33 – Ms. Weiss (Staff): “I believe that any configuration, since we know that this is conceptual, any change in it would have a whole host of changes. And this is a maximum, what they are showing here.”
- e) TR., p. 39 – Mr. Jones (Applicant): “Will it [the design] change? Yes, there will be changes here as we identify particular tenants for the site.”
- f) TR., p. 42 – Mr. Jones (Applicant): “If, in fact, I reduce the density to the degree that some of the community members ultimately are looking for, and that is very possible, then I’m going to be more dependent on surface parking.”
- g) TR., p. 43 – Commissioner Perdue: “How about, given that this is a Preliminary Plan, can they just mush all those boxes together and make one really big box?”

- Mr. Dugan (Applicant’s Attorney): “They have flexibility here to do that.”

Despite these multiple confirmations, Mr. Rochester now asserts that the conceptual layout was never discussed. Not only were they discussed at length, but the very essence of an illustrative plan is that it is subject to change. (Again, a preliminary plan application does not establish building configurations.) As confirmed above, it is beyond question that the internal layout provided for subdivision review were always intended to be illustrative. Given that both Messrs. Rochester and Brown attended and actively participated in the public hearing, their comments are surprising.

c) Setback Waivers Were Already Considered

Regarding the issue of parking and driveway setback waivers, Mr. Rochester expressly acknowledges at p. 2, of his letter that it is the Department of Permitting Services "which has jurisdiction over such waivers," (a fact made clear to all parties at the Board's July 28, 2005 public hearing, and reiterated at Condition No. 15 of both the Opinion and Corrected Opinion). Indeed, as stated by Mr. Weaver (Staff) at the hearing, "Since we [the Staff and Board] do not look at a Parking Facilities Plan as part of our Preliminary Plan, the waiver will be resolved by the Director of DPS as part of the Parking Facilities Plan, which the applicant will be required to prepare as part of the building permits." (TR., p. 7). Regardless, Mr. Rochester now wants the Board to revisit the issue to once again address concerns he raises about the Burtonsville Elementary School, the Patuxent Watershed, other retail in the area, and the surrounding residential community. Mr. Brown seeks reconsideration of the same issue based solely upon his vague assertion that, "I am told that there is uncertainty about the requirement." In effect, they both want a new hearing and, apparently, want to impose site plan – type review on a preliminary plan of subdivision.

As Mr. Weaver clearly stated at the outset of the public hearing, review in a subdivision case is limited to addressing adequacy of public facilities, transportation, access and square footage. (TR., p. 4). Further, as a C-2 zoned property, no site plan review or approval is applicable to the shopping center. Should the Board acquiesce to the requests of Mr. Rochester and Mr. Brown, it would set a precedent whereby it would never reach finality in a preliminary plan case simply because all issues would be subject to continuing, unlimited review.

In sum, the requests for reconsideration of Mr. Rochester and Mr. Brown are time-barred as to the Preliminary Plan Opinion mailed December 19, 2005. Further, even if they were not, they have raised no new issues. They do not request reconsideration of the two minor technical changes made in the Corrected Opinion. The requests must be denied.

5) No Basis Exists for the Planning Board to Revisit its July 28, 2005 Decision

Apart from the late and unfounded assertions made by Messrs. Rochester and Brown, the Planning Board has no grounds in the instant case for reopening the preliminary plan approval on its own. First, the Board's Rules of Procedure regarding reconsideration only allow for a party of record to request such action and do not allow

the Board to act sua sponte. Additionally, as previously recited at the outset of this letter, Section VIII, f), p. 10 of both the Board's final Opinion and Corrected Opinion state,

Aside from the issue of the [parking and driveway setback] 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." (Emphasis added.)

Assuming, arguendo, that the Board's own Rules and/or express conditions of approval are not dispositive of this issue, there are no judicial grounds for reopening the matter. There has been no prerequisite fraud, irregularity or mistake (See, Miles v. McKinney, 174 Md. 551, 564, 199 A. 540, 546 (1938); Schultze v. Montgomery County Planning Board, 230 Md. 76, 80-81, 185 A.2d 502, 504-05 (1962)). Maryland case law makes clear that the power of a board to revise its judgments "is not one which may be exercised arbitrarily, but only where there is justification and good cause." Id. at 82.

Further, "Maryland courts have narrowly defined and strictly applied the terms fraud, mistake and irregularity, in order to ensure finality of judgments." Thacker v. Hale, 146 Md. App.203, 217, 806 A.2d 751, 759 (2002). The term "irregularity" relates to process or procedure, rather than error in truth or accuracy. Weitz v. McKenzie, 273 Md. 628, 631, 331 A.2d 291, 293 (1975). "Mistake" is limited to those relating to jurisdictional power in the context of revising judgments. Thacker at 225. "Fraud" in this context requires an action based on mistaken belief induced by an applicant's misrepresentations. Calvert County Planning Commission v. Howlin Realty Management, Inc., 364 Md. 301, 325, 772 A.2d 1209, 1223 (2001).

None of the aforementioned factors are present or alleged in Preliminary Plan Case No. 1-04109. That the Preliminary Plan building layout was conceptual and illustrative was made clear in: (i) the Staff report; (ii) meetings between the Applicant and neighbors and (iii) numerous statements made by Staff, the Board and the Applicant at the Planning Board public hearing attended and participated in by both Messrs. Rochester and Brown. There was no intent to mislead or defraud and no deception occurred. To the contrary, the Applicant and Staff went out of their way to make the conceptual nature of the application crystal clear to all parties. No mistakes were made and no irregularity arose. As Mr. Weaver clearly enunciated, the scope of Planning Board review of a preliminary plan is limited and the extent of that scope of review was followed by the Board. It does not include the size of building footprints.

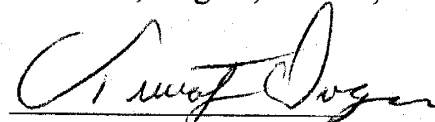
In sum, the Planning Board may not revisit its prior opinions which were valid when issued. As enunciated in McKinney at 566,

otherwise there would be no finality to the proceeding; the result would be subject to change at the whim of members or due to the effect of influence exerted upon them, or other undesirable elements tending to uncertainty and impermanence.

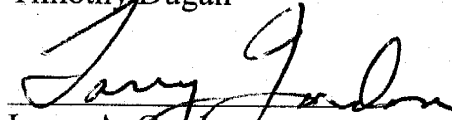
6) Conclusion

As fully supported by the facts, the law, and the Board's own Rules of Procedure, we respectfully request that the Planning Board deny any and all requests for reconsideration.

Respectfully submitted
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.,



Timothy Dugan



Larry A. Gordon

Attorneys for BMC Property Group

cc: Debra Daniel, Esq.
Ms. Faroll Hamer
Ms. Rose G. Krasnow
Mr. Richard Weaver
Ms. Piera M. Weiss
The Honorable Steven Silverman
The Honorable Nancy Floreen
The Honorable Marilyn J. Praisner
Mr. Christopher T. Jones
Mr. Stephen P. Tawes
Mr. Stuart Rochester
Mr. A. Cleveland Brown

EXHIBIT 1

Unofficial Typed Transcript of Planning
Board Proceeding
Preliminary Plan 1-04109

July 28, 2005

Burtonsville Shopping Center

1 THE MONTGOMERY COUNTY PLANNING BOARD OF
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
3

4 Burtonsville Shopping Center #10

5 Preliminary Plan 1-04109
6

7 T R A N S C R I P T
8 O F
9 P R O C E E D I N G S
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13 July 28, 2005

14 VOLUME 1 of 1
15

16 BEFORE:
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18 COMMISSIONER ALLISON BRYANT

19 COMMISSIONER JOHN ROBINSON

20 VICE-CHAIRMAN WENDY PERDUE

21 CHAIRMAN DERICK BERLAGE

22 COMMISSIONER MEREDITH WELLINGTON
23
24
25

EXHIBIT 1

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OTHERS PRESENT:

RICH WEAVER, Development Reviews
PIERA WEISS, Community Based Planning
TIM DUGAN, BMC Property Group
SEAN ROGERS, ESQ., Representing Applicant
CHRIS JONES, Burtonsville Shopping Center
ED PAPAZI, Kinley-Horne Associates
STEVE TAWES, Lordiff and Saltez
JOHN DEESH MONDAVIA
KEN BROWN
STEWART ROCHESTER, Fairland Master Plan
CHARLES PETERS, Santini Road Property Owners Association
LYNN MARTINS, President, Seibel's Restaurant
CLEVE BROWN, President, Patuxent Watershed Protective Assoc.

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Lynn Martins	21
Cleve Brown	22

P R O C E E D I N G S

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2 MR. WEAVER: For the record, Item No. 10 is
3 Preliminary Plan 104 -- 109, Burtonsville Shopping Center.
4 My name is Rich Weaver with Development Review. Joining me
5 is Piera Weiss with Community Based Planning. This is a
6 request for 250,000 square feet of retail uses and 10,000
7 square feet of office uses in the C-2 zone, located in the
8 intersection of Old -- we'll call it now Old U.S. 29, now
9 known as Burtonsville Boulevard, at the intersection of
10 Spencerville Road. This is the existing Burtonsville
11 Shopping Center.

12 And through some work with the Master Plan, we, in
13 recognizing the fact that this shopping center needed some
14 renovation, there was a rezoning, which took a portion of
15 some RC zoned property and rezoned it to the C-2 zone,
16 expanding this envelope, and that was worked through as part
17 of the Master Plan and Piera is here to give her expertise on
18 the Master Plan.

19 I'll go through the elements of this plan. As you
20 can see on this rendered drawing, the envision for this
21 particular shopping center right now is some building pads
22 located throughout the parking facility, totaling 250,000
23 square feet - a 5,000 square foot restaurant and
24 approximately 10,000 square feet of office use conceptually
25 shown in this area. This is in the C-2 zone, and I'll

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1 emphasize this now.

2 This is a Preliminary Plan Review. This is the
3 only review that the Board will have. This will not proceed
4 to the Site Plan stage. And as you may know, we do what we
5 can at Preliminary Plan. We're really looking at setting the
6 APF review, transportation review, we're looking at the
7 access points, we're looking at setting the square footage,
8 and we've done what we can with this Preliminary Plan. There
9 is specific guidance in the Master Plan. And one of the
10 overriding themes in the Master Plan was pedestrian
11 circulation and pedestrian friendly design.

12 Given our limited review, what we managed to do was
13 have the applicant come up with this illustrative circulation
14 plan. And I think what this shows is the general ideas of
15 the road cross sections throughout the site. They are listed
16 on this exhibit, the Illustrative Circulation Plan. There
17 are a number of cross sections shown here. We have looked at
18 those for their pedestrian friendliness, the width of the
19 sidewalks, the setbacks from the curblines, the street
20 treatment as it pertains to the landscaping. We've also
21 asked for lead walks out to the new sidewalk system, which
22 will encircle the site. And, generally, we are happy with
23 what this conceptual plan shows and we've attempted to bind
24 the applicant to that in one of the conditions here. There
25 are a number of conditions.

1 UNIDENTIFIED SPEAKER: 12 and 14.

2 MR. WEAVER: Condition 14?

3 UNIDENTIFIED SPEAKER: And 12.

4 MR. WEAVER: 12 and 14, bind them to the elements
5 of this Circulation Plan. There are a number of road
6 improvements, as the Board may know, for 198 and U.S. 29,
7 including this loop road. Now, 198 kind of tends to tail off
8 to the bottom of this plan and, as you may know, there are a
9 number of businesses along 198. And the existing traffic
10 circulation pattern through Burtonsville is somewhat
11 constrained.

12 The Master Plan envisioned a loop road, although it
13 was not specific in the design and location of that. What
14 has resulted from DPWT's review and Park and Planning's
15 review is somewhat modify loop road, which essentially starts
16 at this location near the intersection of 29. It loops down
17 in front of the existing elementary school next to the site
18 and hooks up down I think at Old Columbia Pike, where it
19 terminates into Route 198.

20 I mentioned elementary school. Note that there is
21 a fairly extensive buffer between the elementary school and
22 the, we'll call it the access road to the rear of the site.
23 There is a zoning line split that I will refer to, which
24 essentially runs down the back of the rear access road. The
25 bulk of the RC zone will be kept as conversation area, mostly

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1 in reforestation or existing forest or at forestation. We'll
2 also house the stormwater management pond. The stormwater
3 management pond has gone through a significant review because
4 there were identified in the Master Plan some existing
5 severely eroded gullies and channels, and this being in the
6 Patuxent River. And it was created by the existing shopping
7 center and the school site. It is our hope, and we are
8 pretty confident, that this stormwater pond will remediate
9 some of those existing erosion problems and tend to control
10 some of that uncontrolled runoff.

11 We have looked at the access points for this
12 property. There will be a right in and right out onto U.S.
13 29, and there will also be two access points onto the new
14 loop road. The loop road is the subject of a county project.
15 A portion of the loop road will be built commensurate with
16 the construction of this project. The remainder of the loop
17 road, it needs further dedications, as it goes offsite onto
18 neighboring properties, and that will kind of be the second
19 phase of this loop road. I believe the applicant will build
20 the first segment down to 198 and initial access point, it
21 will have two initial access points - one on 29 and on this
22 portion of loop road, with the third access to the loop road
23 coming at a later date.

24 This project has recently received a category
25 change approval for sewer for the C-2 portion of the property

1 only - the rural cluster zone - shown here essentially in
2 green, will remain in W-6 and S-6, it's not slated for water
3 or sewer service. I will note for the record that there is
4 the need for a waiver of a setback from the C-2 zone to the
5 applicant's controlled portion of the rural cluster zone.
6 Typically, we would expect to see a setback consistent with
7 the rural cluster zone. In other words, this driveway aisle
8 here would need to be set back approximately 20 feet. This
9 being a side-yard setback from the rural cluster zone.

10 Since we do not look at a Parking Facilities Plan
11 as part of our Preliminary Plan, that waiver issue will be
12 resolved by the director of DPS as part of the Parking
13 Facilities Plan, which the applicant will be required to
14 prepare as part of the building permits. So we are
15 suggesting that it's more -- it is appropriate at this time
16 to have this pass on to the director and to look at when we
17 have a better idea of the potential tenants of this structure
18 and how this will actually lay out. And, again, we are at
19 Preliminary Plan. The layout of this site could change, but,
20 again, we were very interested in looking at the pedestrian
21 circulation through the site as far as the sidewalks go.

22 And with that, I'll segue into Piera, who may have
23 a few words about the history of the Master Plan and how this
24 layout complies with the Master Plan.

25 MS. WEISS: I only have -- wish to answer questions

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1 that you might have, if you have any.

2 CHAIR: There may be one or two questions after we
3 hear from the speakers.

4 MR. WEAVER: May I add one extra condition to the
5 list of the revised conditions? I do need to add a condition
6 that reflects the record plat. Must show Category 1
7 easements on stream valley buffers and forest conservation
8 areas. That is a standard condition that I was remiss in
9 putting on the revised conditions.

10 CHAIR: Great. Applicants?

11 MR. DUGAN: Good evening. For the record, my name
12 is Tim Dugan. Sean Rogers [PHONETIC SP.], representing the
13 applicant. With me this evening is Chris Jones of the
14 Burtonsville Shopping Center, the owners; Ed Papazi [PHONETIC
15 SP.] of Kinley-Horne, our traffic engineer; and then from
16 Lordiff and Saltez [PHONETIC SP.], we have Steve Tawes
17 [PHONETIC SP.], John Deesh Mondavia [PHONETIC SP.], and Ken
18 Brown, in order to answer questions here for you.

19 Certainly we'd like to take a moment to thank the
20 staff for their assistance, especially Piera Weiss and Rich
21 Weaver have been a big help. Sharon and Ethan have been
22 great. Sherry Armiri [PHONETIC SP.] and Candy Benott
23 [PHONETIC SP.] have worked a long time, shoulder to shoulder
24 with us, and we appreciate their help.

25 We'd also like to acknowledge some of the