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1 a whole host of changes. And this is a maximum, what they
2 are showing here.

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. WEISS: So --

5 UNIDENTIFIED SPEAKER: Okay. That's -- those are
6 my questions. Thank you.

7 UNIDENTIFIED SPEAKER: Those were good questions.
8 It helped develop the issue I think. It was helpful to me.

9 UNIDENTIFIED SPEAKER: Okay.

10 CHAIR: You were going to give him a chance to
11 explain --

12 UNIDENTIFIED SPEAKER: Yes, please, to respond.

13 CHAIR: -- loss of --

14 MR. DUGAN: Thank you. Mr. Allison -- Mr. Bryant,
15 I wanted to just remind the Board that at the time of the
16 Master Plan, when we were working on the size of the area
17 that we were asking to have rezoned, we thought the loop road
18 was likely to be built back there and that we would use the
19 loop road in order to access the site. If that's the case,
20 then we would have -- we would be using essentially the area
21 that we have indicated now that we are using. We don't have
22 that loop road on the RC zoned land. We've got to provide
23 something on our own land, and so we're trying to maintain
24 the same basic area that we were going to develop that we
25 would have had on our [line], if the loop road had been built

1 where it was. So there were certain expectations that are
2 now pulled off the table that we don't have anymore. And so
3 it's not --

4 CHAIR: And you are saying those were Master Plan
5 expectations?

6 MR. DUGAN: Yes, they were in the Master Plan.
7 That one recommendation I read to you. I think it was on
8 page 72 or --

9 CHAIR: You had expectations, that's one issue;
10 that you're saying the Master Plan confirmed your
11 expectation, that's a different issue.

12 MR. DUGAN: I wouldn't want to overstate any
13 expectation, except that it said "outer loop road adjacent to
14 the outer perimeter of the new C-2 zoned land." So we were
15 assuming that when we figured out what area we were going to
16 use for C-2 zoned land, and we asked for three acres
17 approximately, the notion was that we would connect from that
18 loop road. And so that was the land area that we were zoned,
19 but now we don't have that loop road. So now we have a loop
20 road on the back of the property, which let me add one thing.
21 It makes it a lot easier to segregate truck traffic at the
22 light to use the back property to bring the truck traffic
23 around that way. It better segregates it from the
24 pedestrians and from the normal customer driving in and out
25 as well. And so, as you can imagine, if we --

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1 CHAIR: My question is what do you lose if you --

2 MR. DUGAN: Well, you have -- there's a ripple
3 effect. There is a ripple effect there into the rest of the
4 area there. There is less land that we can use. And so how
5 it shakes through, one would be in this area, we'd lose
6 certainly surface parking. We'd have to put more underground
7 parking, which here it would be difficult and expensive. If
8 it works in Burtonsville in the first place, we wanted to
9 make sure we sized the thing so that we design the roadway
10 improvements that we would make there. That we wouldn't
11 undersize them, so we'd have in terms of APFO and the like,
12 we would have the traffic that we felt it would generate.
13 That, of course, translates to the traffic lights that we
14 expect we'll probably install on 29 and 198 as well.

15 And so -- but, fundamentally, we thought that there
16 is an abundance of setback there, given the fence and given -
17 - and the forest conservation areas in that we're certainly
18 not going to use that RC zoned land. And we've got a very
19 robust best management practices. The Environmental Planning
20 staff said that with respect to the Stormwater Management
21 Facility. So I think they have -- they've accommodated many,
22 many, and embraced many, many of the goals in the Master
23 Plan.

24 UNIDENTIFIED SPEAKER: Let me make sure I
25 understood you correctly, and please, staff, you are going to

1 listen to this, Mr. Dugan just represented that they are not
2 going to use the RC land. What that means to me is that that
3 land is not going to be developed ever. Is that what that
4 means to you?

5 MR. DUGAN: That land will have a category one
6 forest conservation easement on it. Because the bulk of it
7 is in reforestation or forestation where stream buffered.

8 UNIDENTIFIED SPEAKER: Okay.

9 CHAIR: So the suggestion that it might someday
10 develop in residential and there might be a compatibility
11 concern is really not --

12 [END OF SIDE ONE.]

13 UNIDENTIFIED SPEAKER: -- because Mr. Dugan did
14 speak about the Master Plan and the fact that the language in
15 the Master Plan says put the public loop road, this is a
16 distinction I feel was made, it's a public loop road in the
17 RC area and the zoning land would follow the inside of this
18 public loop road. The reason why we did that was that he
19 didn't lose density if we put the public road on his
20 property. He still has to have a setback from the public
21 road and the public road would be zoned rural cluster.

22 UNIDENTIFIED SPEAKER: Okay.

23 UNIDENTIFIED SPEAKER: So it would have to be a
24 setback.

25 CHAIR: Okay.

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1 UNIDENTIFIED SPEAKER: But we don't need a
2 circulation drive though.

3 UNIDENTIFIED SPEAKER: My point was the Master Plan
4 was recommending a public road that went all the way back
5 through there for his particular property. That public road
6 is not going to be built.

7 UNIDENTIFIED SPEAKER: Right.

8 CHAIR: Now, what exactly are you building here?
9 Because I have to say, as a retail center, this is a -- I've
10 never seen a design like this before. What exactly is this
11 going to be?

12 MR. DUGAN: I'll let Chris Jones tell you what he
13 expects and what he knows today.

14 CHAIR: Okay.

15 MR. JONES: Right now, I mean, again, part of my
16 concern here and part of my mandate to move my engineers and
17 so forth was to make sure that we did not under-design our
18 infrastructure, that we did not under-design our road
19 capacity and our entrances. That we created a theoretical
20 maximum for the site with retail, not going into the office
21 densities that you could put on a C-2 or something like that
22 but in a retail context. That we created a theory maximum so
23 that when we designed our infrastructure, when we designed
24 our stormwater management, when we presented this plan, that
25 everybody, staff as well as I could be confident that the

1 infrastructure and the public facilities were adequate to
2 handle any development we might do.

3 At this stage, we have not approached any
4 retailers. We do not have any tenants lined up for this. I
5 have met many, many times with the community about this
6 project and I've been very careful not to make undue
7 representations because I don't know. Will it change? Yeah,
8 there will be changes here, as we identify particular tenants
9 for the site. And can I say definitively? We are trying to
10 establish some characteristics of streetscaping, the elements
11 of the Master Plan that were there, that we will, in fact,
12 have appropriate streetscaping, that we will have these
13 pedestrian-friendly elements. But it is going to get
14 configured -- that the tenants we ultimately get will kind of
15 dictate the shifts and shakes of it.

16 One of the things we're trying to show is sort of a
17 street pattern. There has been sort of talk of, well, this
18 isn't the town center we were looking for. One of the
19 layouts that we were trying to establish here is more of a
20 street grid kind of pattern than a straight strip shopping
21 center that you're used to seeing with just the stores strung
22 out in a row. But the final, final configuration of it will
23 depend very much on the specific tenants we get.

24 UNIDENTIFIED SPEAKER: So what you're saying is --
25 I'm sorry.

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1 UNIDENTIFIED SPEAKER: No, no.

2 UNIDENTIFIED SPEAKER: You're saying that this
3 concept --

4 UNIDENTIFIED SPEAKER: Site Plan.

5 MR. JONES: It's a Preliminary Plan. I don't have
6 tenants yet. And is sort of have a chicken and the egg. I
7 can't get tenants when they have no certainty that I can do
8 something because they won't --

9 UNIDENTIFIED SPEAKER: Yeah. No, I understand.

10 MR. JONES: -- talk to me. So I'm kind of --

11 UNIDENTIFIED SPEAKER: I understand. I'm just
12 saying --

13 MR. JONES: But I'm trying to bring in elements of
14 free-standing buildings developed with finished lines --

15 CHAIR: Yeah. Actually, the reason for my question
16 was you're arguing one of the reasons we should grant you the
17 waiver is so that you have more square footage. If I knew
18 what you wanted more square footage for, I'd feel more
19 comfortable.

20 MR. JONES: I think it's more an issue of
21 functionality, if I could speak to that. Because Piera is
22 making the distinction of public versus private road. But
23 from a functional point of view, and if you look at the
24 illustrations in the Master Plan that show the public access
25 road on the RC land, it is essentially functioned as a rear

1 service road.

2 CHAIR: Right. But you could still have a rear
3 service road that's 20 feet further east.

4 MR. JONES: Bear with me. Let's --

5 CHAIR: It's just further east.

6 MR. JONES: Bear with me please. I mean, I've got
7 a really -- one of my problems is in any configuration, we
8 could play with this all day long. But I have an amoeba of a
9 site. If you think of the typical retail site, it is
10 rectangular and it has corners and nice 90-degree angles. I
11 have no straight lines. If you look at my zoning
12 [INDISCERNIBLE] up there, I have no straight lines. And I
13 pinch down in certain areas.

14 If you go to where that loop road, the zoning line
15 was established, in talking to the staff, they told us what
16 the turning radius at speed was going to be for a road. So
17 that whole rear line was, basically, this is the speed
18 traffic will be going, you can't have a radius more than
19 this, you can't have a 90-degree angle, and so forth.

20 It becomes very problematic to lay out any shopping
21 center there. And rear service drives are critical. In the
22 Master Plan, the public road essentially served the function
23 of that rear service drive. You could access the property.
24 And even though we then had a setback to parking, still our
25 rear service drive was, in essence, off of the commercial

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1 area. Now, if we have to bring that rear service drive in
2 and then pull the parking in, it has this ripple effect and
3 you get to a point that even if I were to cut the density of
4 this project, here I'm showing a great deal of structured
5 parking. I have 800 structured parking spaces on this plan.
6 It is not certain that the economics ultimately will justify
7 that. And then I may have to move to surface parking. If,
8 in fact, I reduce the density to the degree that some of the
9 community members ultimately are looking for, and that is
10 very possible, then I'm going to become much more dependent
11 on surface parking.

12 CHAIR: I understand. Okay. I get your point.

13 UNIDENTIFIED SPEAKER: I have two questions. First
14 question, with respect to the waiver, I'm a little confused
15 about whether we grant the waiver -- so that's not our issue?

16 MR. JONES: No, we just thought that you should be
17 aware that we were going to ask for the waiver.

18 UNIDENTIFIED SPEAKER: Okay, but even if we thought
19 that was awful, what's our role? Is there anything we could
20 do about it? I'm not saying I think that -- I understand
21 what the scope of my authority is. I love talking about
22 issues I have nothing to do with and we could go another
23 couple of hours on it, but I just sort of would like to
24 understand what the range of authority is?

25 MR. JONES: The authority is with the director of

1 DPS in this case and you could be advisory.

2 UNIDENTIFIED SPEAKER: Okay. The other issue is,
3 I, too, share the Chairman's [INDISCERNIBLE]. This is an
4 unusual configuration and I was having a little trouble
5 imagining a corollary on the grounds on somebody whose
6 already got one of these that looks like that. So that then
7 raises a question in my mind, we had Stewart's testimony,
8 worried about Son of Sam. How about, given that this is a
9 Preliminary Plan, can they just mush all those boxes together
10 and make one really big box?

11 MR. DUGAN: They have flexibility here to do that.

12 UNIDENTIFIED SPEAKER: Okay.

13 MR. DUGAN: We refer to the big box size limit.
14 That's essentially 120,000 square feet with a pharmacy and a
15 full-line grocery store. You get to that size and we start
16 talking about special exceptions and at that point we can get
17 the Site Plan type review.

18 UNIDENTIFIED SPEAKER: All right.

19 MR. DUGAN: If you were special exception, we are
20 in here with architecture, building materials, you know,
21 everything.

22 UNIDENTIFIED SPEAKER: I'm willing to proceed,
23 based upon the understanding of Condition 15. In Condition
24 15, you state that, and what was really -- 14 concerned me
25 because by voting for the conditions, you essentially are

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1 buying into the conceptual plan that's there. But 15 does,
2 in fact, make provisions for the agency that makes the
3 decision to make the decision, but if the agent says we are
4 not going to give it to you then they have to go to where I
5 was going to have them go at this point anyway, which is to
6 make sure that the parking facilities comply with the
7 setbacks. So I'm okay now based up on that. But let me also
8 say that from the -- in terms of advantages, I remember, by
9 the way, when you came to speak to us when HSA was going to
10 do that road and how you talked in terms of what they did to
11 that road, how it would affect you, and we worked very hard
12 to make sure that you got the entranceway. So I just want t
13 let you --

14 UNIDENTIFIED SPEAKER: I appreciate it.

15 UNIDENTIFIED SPEAKER: Okay. I just wanted to let
16 you know that we remember that too.

17 UNIDENTIFIED SPEAKER: And I do as well and I
18 appreciate it.

19 UNIDENTIFIED SPEAKER: Okay. All right.

20 UNIDENTIFIED SPEAKER: Well, your Condition 15 does
21 highlight for me then -- I'm back to trying to understand
22 what our range of authority is. It says "obtain a waiver of
23 the setbacks." That implies we think they -- by golly, they
24 should do that.

25 UNIDENTIFIED SPEAKER: The second sentence I think

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Montgomery County Planning Board in the matter of:

Burtonsville Shopping Center #10

1-04109

By: D. Blum

Date: 4-5-06

Debra L. Blum, Transcriber

4/5/06

FAIRLAND MASTER PLAN CITIZENS ADVISORY COMMITTEE

June 27, 2006

HAND DELIVERED

Mr. Derick Berlage, Chairman
And Montgomery County Planning Board Commissioners, M-NCPPC
8787 Georgia Avenue
Silver Spring MD 20910

RE: Preliminary Plan 1-04109 (Burtonsville Shopping Center)
Response to Applicant Attorneys' Letter of June 23, 2006

Dear Chairman Berlage and Commissioners:

Having neither the time nor pockets to hire an attorney to rebut Mr. Dugan's and Mr. Gordon's letter of June 23 challenging our request for reconsideration of the Corrected Opinion of March 21, 2006, in the matter of Preliminary Plan 1-04109 (Burtonsville Shopping Center), the Fairland Master Plan Citizens Advisory Committee (CAC) will reply herein as forcefully and directly as it can, while standing by our reconsideration request of March 24 and countering the applicant's assertions at greater length during our testimony at the upcoming reconsideration hearing. As always, we will rely on the facts (some of which Messrs. Dugan and Gordon have correct and others they have stretched or concocted) and common understanding of the English-language usage of the words "conditions," "binding," and the like rather than selectively-cited legal precedent that has only passing relevance for resolving what is at issue in this case.

Regarding the attorneys' point that the reconsideration request itself should be dismissed because it was filed too late and there are no judicial grounds for reopening the matter, the CAC, as advised by General Counsel and as required, submitted its request within 10 days of issuance of the Corrected Opinion and precisely and pointedly based the request on the two conditions that the Opinion (and the attorneys themselves) cite as having been contested (waiver and master plan conformance)—see Finding (f), page 10, of the Opinion—and therefore the only issues upon which substantive questions may be raised subsequent to the original opinion assuming the revelation of pertinent new information or facts. That a party to the record may request reconsideration of substantive issues within 10 days of the issuance of a Corrected Opinion is well-known to the attorneys through their own request for changes in the original opinion, when they were advised by the Planning Board's General Counsel that the proper remedy was to "file a request for reconsideration within 10 days of the mailing of the corrected opinion" (see attachment and reference to Counsel's March 27, 2006, letter in para 5 below).

As for the waiver issue, Dr. Brown and the Patuxent Watershed Protective Association have spoken to that point. The CAC would add simply that the "waiver" discussion throughout the record is based on what was subsequently determined to be a presumptive error, a mistaken assumption, and therefore needs to be corrected (and we believe reheard) if the Board is concerned about the accuracy of the record and the correct characterization of the issue.

ATTACHMENT SEVEN

The CAC's primary concern relates to "master plan conformance" and indeed the requirement in Condition 12 (and related Condition 14) for "**substantial**" master plan conformance. The CAC does not want to "re-argue issues that are not new," which is the attorneys' contention, or even necessarily to revise or alter the language of the conditions of approval, but rather to set the record straight with the introduction of new information indicating that the applicant had no intent and has no ability to do the plan that he showed the community and the Board in order to get approval—and that was the basis for his density calculation and a circulation plan that enabled him to comply with even a semblance of conformance to master plan guidelines. (See attached page 2 of Dugan Feb. 7 letter to DPS, and Fairland CAC Mar. 23 letter to DPS Director Robert Hubbard.) **The facts are that the Board approved a plan that cannot be done, with conditions that cannot be met, except by the applicant parsing semantics and relying on the vagaries of the C-2 zone to achieve an outcome that neither the master plan nor the Board intended.**

Messrs. Dugan and Gordon go to great length to argue that the applicant was straightforward with the community, the planning staff, and the Board as to what could result on this site and, more importantly, that staff and Board acquiesced in the notion that a "big box" store and a sea of surface parking on this site was somehow consistent with the conditions of approval and substantial conformance to master plan guidelines. In their letter of June 23, they quote Mr. Weaver and Ms. Weiss as conceding the "layout will change" (p. 7) and that the project may not be built "exactly as shown" (p. 6); of course this was understood, but the expectation, and the requirement (according to the adopted conditions of approval, which after all are the last word on the subject), was that the applicant, even given wide latitude, nonetheless had to conform substantially to master plan guidelines and was "bound to" at least the "elements of the Illustrative Circulation Plan." Indeed, so concerned were the applicant and his attorney by those express conditions that subsequent to the Board's decision of December 19, 2005, on December 29, 2005, they wrote planning staff, ala Clarksburg, asking staff to sign off on an 11-page menu of "interpretations" and "modifications" of the Opinion. **SIGNIFICANTLY, in a letter of March 27, 2006 (see attachment), the Planning Department's General Counsel informed Mr. Dugan that to get the latitude he was seeking would require a reconsideration filing or an AMENDMENT to the plan!!**

Attorneys and client have since decided to ignore the stated conditions, and General Counsel's letter reaffirming them, by either emphasizing the vagueness of the single word "illustrative" (choosing to disregard the semantic clarity of "substantial conformance," "pedestrian-friendly internal street network," "bound to the elements of," "conditions" of approval, etc.) or parroting a single brief sidebar exchange as if it were some kind of smoking gun. In the latter instance, Commissioner Perdue asked if they believed they had the ability to combine all the square footage into a single big box and Mr. Dugan answered affirmatively with all the conviction of a suspected offender coming clean after being found with his hand in the cookie jar. And that hiccup in the record is the best they can muster to support their case. You will note that Commissioner Perdue did not say, "Great. Go for it." Although one might have wished the commissioner would have explored further with the applicant the implications—i.e., what is left of the town center concept when you assemble all or almost all of the capacity into a single 140,000 square foot box (the size of two Best Buy stores back to back) and eliminate the parking garage so that 1,000 parking spaces spill over onto the site—what

is significant is that the Board did not mitigate or modify the conditions to clarify that the applicant could go there as a matter of right or compliance. Moreover, if there is any question, it is not for the applicant, but for the planning body, to construe whether the final plan they show the County meets the threshold of “substantial conformance to master plan.”

With regard to the attorneys’ references on pages 5-6 of their June 23 letter to the C-2 clause expressly permitting a wide range of uses “for a regional or local area,” the attorneys disingenuously underline regional whereas the Fairland Master Plan prominently and repeatedly specifies in three distinct places at the very front of the plan that the appropriate use on the site is to serve a local neighborhood need and purpose (see attached pages xiv, xv, and xvi from the 1997 Fairland Master Plan). **So, yes, the C-2 zone “permits” a wide range of uses—they have created a straw man here, as no one is contesting that—but it does not preclude the requirement that the scale and character of development on a C-2 site be appropriate to and compatible with adjacent uses (in this instance, an elementary school and the Patuxent Watershed) and consistent with master plan intent and vision.**


Finally, the attorneys argue that “mistake” or “fraud” must be found in order to reverse a decision, though in fact Maryland case law makes clear a board may revise its judgment “when there is justification and good cause.” We are not seeking to indict the applicant for “fraud,” nor do we believe he made any “mistake” that was not calculated. Mockery, travesty, Trojan horse, bait and switch—any of those will suffice. Even a preliminary plan in this county, one hopes, has to pass a laugh test; the pedestrian-friendly stipulation alone presumably rules out a single big box and a sea of parking islands on a site (perhaps Mr. Dugan can tell us of anyone he knows who walks to a Costco). This is about not merely whether the “conditions of a preliminary plan” have any meaning at all, but whether the English language has any meaning in our planning process.

In closing, the master plan committee would submit that the record of a preliminary plan is singularly, especially, important in the case of a C-2 zone. As we state in our reconsideration request, precisely because the Planning Board in the C-2 zone gets only one opportunity for comprehensive review in the absence of a site plan requirement, it is all the more imperative that maximum care, clarity, and accuracy be achieved in the record of opinion for development in this zone. We prefer you address the discrepancies and deficiencies or any ambiguities in the record through the reconsideration process. But we would at least expect the Board to hold the applicant accountable to the conditions of approval during the parking facility review and building permit review—whatever compliance mechanism you will be involved in either yourselves or through input to the Department of Permitting Services. Should it turn out that the conditions of approval in a C-2 preliminary plan are not “conditions” at all, or are so hollow and so worthless they amount to a charade, then please in the future do not again put citizens, or yourselves or staff, through a phony exercise; just state that there is no purposeful review in the C-2 zone, dispense with the pretense of a preliminary plan, and hand the developer a blank slate on which to work his will.

Allow me a personal observation. We believe this plan has never received the scrutiny it deserves or that the community from early on asked for as a matter of high urgency. To some participants it

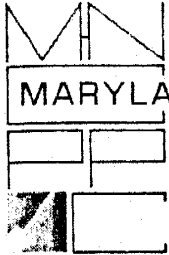
seems that both the County Council, with its keeping the C-2 ZTA on hold, and the Planning Board are satisfied to kick the can down the road. At stake is not merely the credibility of the post-Clarksburg commitment to rigor and integrity but possibly the fate of a planning area that, not unlike the subject site, is at a key crossroads. Burtonsville is a wonderful diversified group of neighborhoods—you saw it by the faces that came to testify on the Blackburn Road development last month—but it is fragile. You make a planning mistake of this magnitude here and you don't get to make others—because the hope and trust that residents place in their being able to shape one of the most visible and defining elements of their community will have been erased along with the possibility for a town center of any character or promise. I'm reminded of what Dr. Nelson had to say about the big box at your last Shady Grove forum, that it had the least useful life of any land use, commercial or residential, that the initial developer typically gets out at the 7-year mark and turns the property over to a stupid investor, leaving the fool and the community holding the bag. I will not impute that motive to Mr. Jones but I will do my utmost, and in the end I feel certain this Planning Board will also, to make sure that doesn't happen.

Sincerely,


Stuart Rochester
Chair, Fairland Master Plan CAC

Attachments

cc. Debra Daniel ✓
Faroll Hamer
Rose Krasnow
Richard Weaver
Piera Weiss
Councilman Steven Silverman
Councilmember Marilyn Praisner
Councilmember Nancy Floreen
Dr. Cleve Brown
Christopher Jones
Timothy Dugan
Larry Gordon



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

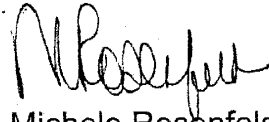
Dear Mr. Dugan:

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.

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

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

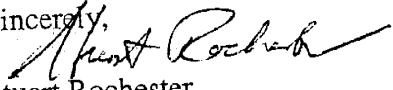
Dear Mr. Hubbard:

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.

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

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.²) Further if setbacks were also imposed along the irregularly curved RC/C-2 zoning line³ in the rear, the arching shape, plus setbacks, would cause a ripple

² 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.

³ 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)

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.

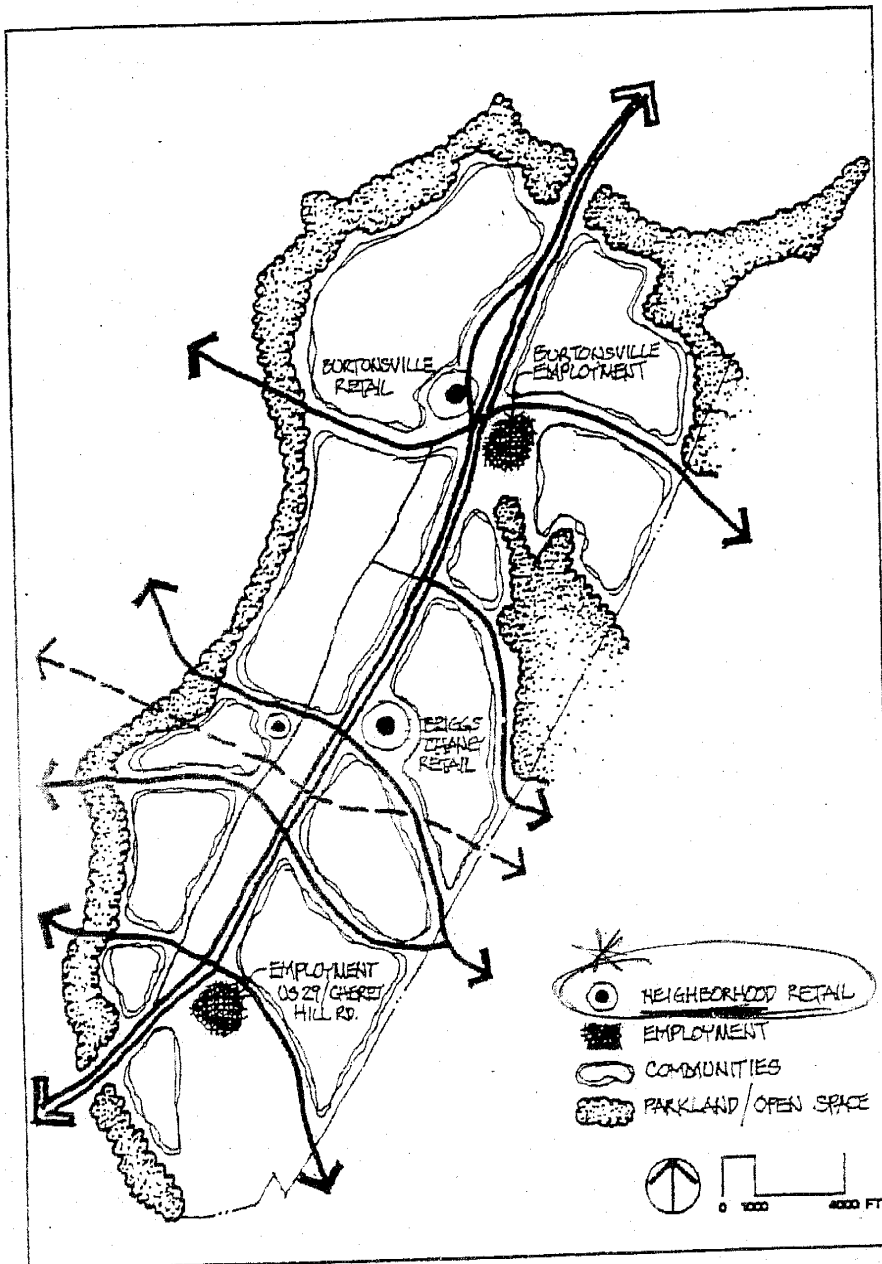
The Fairland Master Plan has community building as one of its key components; recognizing and reinforcing each community's unique character and identity and ensuring that local centers serving the communities are attractive, functional, safe, and accessible. The communities of Fairland are composed of 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:

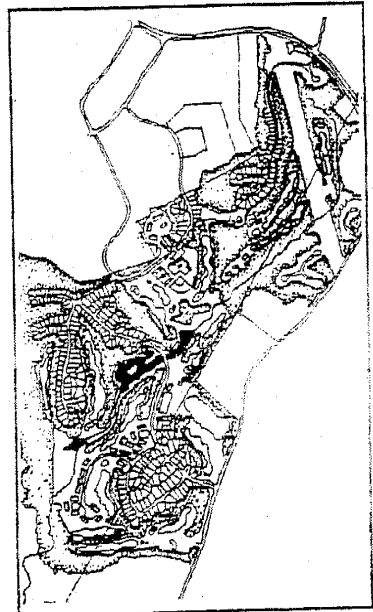
- Increases the potential for a greater percentage of single-family detached homes in undeveloped or underdeveloped areas within Fairland while maintaining a mix of housing types.
- Recommends a golf course community that straddles the Montgomery and Prince George's Counties' boundary and incorporates 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.

COMMUNITIES AND CENTERS

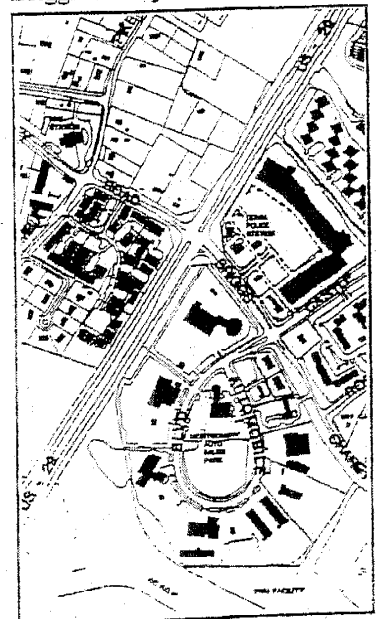
FIGURE 1



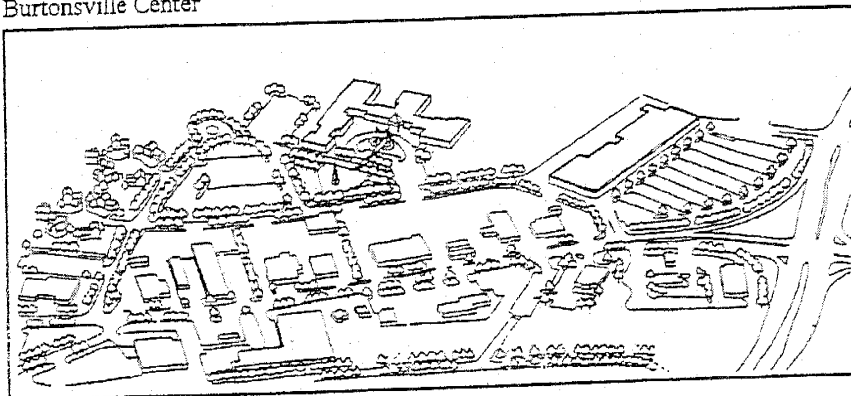
Golf Course Community



Briggs Chaney Center



Burtonsville Center



The Fairland Master Plan recommends enhancing mobility by providing a safe and efficient 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 streetscaping, 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.