



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

**APPROVED
MINUTES**

The Montgomery County Planning Board met in regular session on Thursday, September 13, 2012, at 9:10 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 9:46 p.m.

Present were Chair Françoise M. Carrier, Vice Chair Marye Wells-Harley, and Commissioners Casey Anderson and Norman Dreyfuss. Commissioner Amy Presley joined the meeting at 9:30 a.m. during discussion of Item 2.

Items 1 through 4 are reported on the attached agenda. Item 6, a Closed Session Item was postponed.

The Board recessed for lunch at 1:20 p.m. and to take up Item 13 in Closed Session.

In compliance with §10-509(c)(2), State Government Article, Annotated Code of Maryland, the following is a report of the Board's Closed Session:

The Board convened in Closed Session at 1:30 p.m. in the third floor conference room, on motion of Commissioner Anderson, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion. The meeting was closed under authority of State Government Article Annotated Code of Maryland §10-508(a)(7) to consult with counsel to obtain legal advice.

Also present for the Closed Session were Associate General Counsels Carol Rubin and David Lieb of the Legal Department; Acting Planning Department Director Rose Krasnow; and Clara Moise of the Commissioners' Office.

In Closed Session, legal staff briefed the Board on the status of the court decision regarding the court case filed by community groups related to the Planning Board approval of the Preliminary Plan for the First Baptist Church of Wheaton.

The Closed Session was adjourned at 1:55 p.m. and Commissioner Presley left for the day.

The Board reconvened in the auditorium at 2:55 p.m.

Items 7, 8, and 5, taken up in that order, are reported on the attached agenda. Item 8 was recessed at 6:18 p.m. and taken up again, following discussion of Item 5, at 6:49 p.m.

MCPB, 9-13-12, APPROVED

The Board recessed for dinner at 6:53 p.m. and reconvened in the auditorium at 7:43 p.m., with the same four commissioners present.

Items 10 through 12 are reported on the attached agenda.

There being no further business, the meeting was adjourned at 9:46 p.m. The next regular meeting of the Planning Board will be held Thursday, September 20, 2012, in the Montgomery Regional Office in Silver Spring, Maryland.

M. Clara Moise
Technical Writer

Ellyn Dye
Technical Writer

Montgomery County Planning Board Meeting
Thursday, September 13, 2012
8787 Georgia Avenue
Silver Spring, MD 20910-3760
301-495-4600

1. Consent Agenda

***A. Adoption of Resolutions**

Alta Vista Preliminary Plan 120070750 - MCPB No. 12-78

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other: PRESLEY ABSENT

Action: Adopted the Resolution cited above, as submitted

B. Record Plats

1. Subdivision Plat No. 220121140, Woodburn; R-60 zone, 2 lots; located on the western quadrant of the intersection of River Road (MD 190) and Goldsboro Road (MD 614); Bethesda-Chevy Chase Master Plan.

Staff Recommendation: Approval

2. Subdivision Plat No. 220121500, Travilah; RE-2 zone, 1 lot; located on the south side of Travilah Road, at the intersection with Royal Manor Way; Potomac Subregion Master Plan.

3. Subdivision Plat No. 220121610, Jenkins addition to Hunting Hill; R-200 zone, 1 lot; located on the south side of Hunting Lane, approximately 1,000 feet west of Darnestown Road; Potomac Subregion Master Plan.

Staff Recommendation: Approval

4. Subdivision Plat No. 220121660, West Chevy Chase Heights; R-60 zone, 1 lot; located on the south side of West Virginia Avenue, 275 feet east of Maryland Avenue; Bethesda-Chevy Chase Master Plan.

Staff Recommendation: Approval

5. Subdivision Plat No. 220121990, Chevy Chase View; R-90 zone, 1 lot; located on the north side of Dresden Street, 375 feet west of Connecticut Avenue (MD 185); Kensington Wheaton Master Plan.

Staff Recommendation: Approval

BOARD ACTION

Motion: WELLS-HARLEY/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other: PRESLEY ABSENT

Action: Approved staff recommendation for approval of the record plats cited above.

C. Other Consent Items

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: There were no Consent Items submitted for approval.

D. Approval of Minutes

Minutes of July 19 and July 23, 2012

BOARD ACTION

Motion: WELLS-HARLEY/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other: PRESLEY AB SENT

Action: Approved the Planning Board Meeting Minutes cited above, as submitted.

2. Preliminary Plan Amendment 11998096B, In Response to a Violation – Kaufman Property

Lot 11, Block A; Request to amend Category I Conservation Easement to allow inclusion of play area; R-90 Zone; on 0.25 acres located on Heartfields Drive in the 1997 White Oak Master Plan.

Staff Recommendation: Denial

BOARD ACTION

**Motion: 1) DREYFUSS
2) ANDERSON/WELLS-HARLEY**

Vote:

Yea: 2) 4-0-1

Nay: 2) DREYFUSS

Other:

**Action: 1) MOTION TO DEFER FAILED FOR LACK OF A SECOND.
2) Approved staff recommendation of denial, and instructed the applicant to remove the existing play area according to the administrative law judge decision.**

Planning Department staff noted that this meeting is a continuation of the April 12 hearing on limited amendment to a preliminary plan for the purpose of amending the final forest conservation plan to allow for a play area within a Category I Conservation Easement at a single-family dwelling located on Heartfields Drive in Silver Spring. The request is in response to a notice of violation issued to Mr. Christopher Pirtle, the applicant. Staff recommends denial because the proposed plan does not meet the Planning Board's direction to the applicant to either submit a revised final forest conservation plan with the existing play area retained within the Category I Conservation Easement, appropriate new plantings in the easement area, and suitable stormwater management to alleviate downslope drainage issues, or to submit a revised final forest conservation plan with the play area relocated outside of the Category I Easement and appropriate new plantings in the easement area.

Mr. Josh Maisel, engineer representing the applicant, also present, noted that the applicant has worked with staff and has done his best to follow the Planning Board's instructions and he does not support the staff recommendation of denial.

The following speakers offered testimony: Ms. Julia Wilson of Heartfields Drive; Ms. Maria Germany of Caplinger Road; Mr. Robert Lynn of Caplinger Road; and Mr. Paul Wietsma of Kathryn Lane.

There followed extensive Board discussion with questions to staff and the applicant's representative.

Commissioner Dreyfuss noted that he would suggest that the Planning Board defer this item and ask the applicant to work with staff on resolving issues discussed at the meeting.

3. Limited Site Plan Amendment No: 81984024B and 81985006B: Greencastle Lakes

Installation of a 7-foot high security fence along the southern property boundary and a pedestrian sidewalk, located approximately 350 feet from the intersection of Ballinger Drive and Robey Road and southeast of Columbia Pike (US 29), R-90 Zone, Fairland Master Plan.

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: **ANDERSON/PRESLEY**

Vote:

Yea: **5-0**

Nay:

Other:

Action: **Approved staff recommendation for approval, subject to conditions, as stated in the attached Board Resolution.**

Planning Department staff discussed the request to construct a 7-foot high security fence along the southern property boundary of Greencastle Lakes Apartments, and a 5-foot wide pedestrian sidewalk connection to a local bus stop to be located approximately 350 feet north of the intersection of Ballinger Drive and Robey Road, east of Columbia Pike (US29) in the Fairland Master Plan area. Staff noted that the modifications proposed in these applications will directly impact the pedestrian circulation patterns within the Greencastle Lakes community and the neighboring properties. Staff has worked with the community to identify a safe and adequate location for a pedestrian access point along the proposed fence alignment. Due to the existing foot paths, landscape buffer, and the steep slopes along the property boundary, one location was identified for providing safe and adequate pedestrian circulation. The modifications to the site plan do not alter the overall design character of the development in relation to the original approval, and the development remains compatible with the existing adjacent development.

Mr. Dino LaFiandra, attorney for the applicant, briefly discussed the proposed request and concurred with the staff recommendation.

The following speakers offered testimony: Ms. Eunice Lewis Seagraves of Castle Terrace; Mr. Kevin Thornton, attorney representing Ventura Townhouse Condo; Ms. Joy Patil of the Montgomery County Police; Mr. Israel Putnam of Angelton Court; Mr. Richard Jones of Ballinger Court; Mr. Randy Hamas of Childress Terrace; and Mr. Mike Stemphr of Beaker Court; and Mr. Nathan Zimper representing Greencastle Lakes Homeowners Association.

There followed a brief Board discussion with questions to staff and the applicant's representative.

4. Preliminary Plan Review No. 120110200, 8701 Burning Tree Road

R-60 Zone, 1.45 acres, 1 lot for 1 one-family detached unit, located on Burning Tree Road, east of Beech Tree Road, Bethesda Chevy-Chase

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval, subject to revised conditions, as stated in the attached Board Resolution.

Planning Department staff discussed the request to create one lot for a one-family detached unit on a 1.45-acre property located on Burning Tree Road, east of Beech Tree Road in Bethesda. The property consolidates a portion of lot 1, outlot B, and the remaining portion of Lynbrook Drive abandoned by County Resolution 16-1296. The site is encumbered by environmental constraints, including a stream buffer and 100-year floodplain creating a small buildable envelope for the proposed improvements. Staff is agreeable to certain permanent encroachments into the stream valley buffer thereby allowing a reasonable building envelope and yard space under the following conditions: the applicant should do a two-to-one offsite forest mitigation for areas of stream valley buffer not placed in easement; perform eradication of existing invasive species; add new native plantings associated with the stream channel; provide an onsite Category I easement within portions of the stream valley buffer; ensure that the forest conservation planting requirements are met onsite, and the proposed improvements are situated in a manner that respects the environmental features as much as possible, and mitigation for the impacts is accommodated with the proposal.

Ms. Casey Cirner, attorney for the applicant, introduced Mr. Keith Burgess, the applicant, and Mr. Les Powell, member of the applicant's team, briefly discussed the proposed request and proposed revisions to conditions 9 and 10 of the staff report, and concurred with the staff recommendation.

There followed a brief Board discussion with questions to staff and the applicant's representative.

9. Worksession on Zoning Ordinance Rewrite

(NOTE: Introduction to the proposed code, proposed changes, etc.)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefing by Planning Department staff on the proposed Zoning Ordinance Rewrite, followed discussion and questions to staff.

6. Closed Session - POSTPONED

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(7) to consult with counsel to obtain legal advice

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: This item was postponed.

13. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(7) to consult with counsel to obtain legal advice

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed in Closed Session. See official citation and open session report in narrative minutes.

7. Towne Crest Apartments, LLC, Applicant

A. Local Map Amendment No. G-910: Towne Crest Apartments, LLC, applicant -

Reclassification of 8.1 acres of land from the R-30 and RT-12.5 Zones to the PD-44 Zone for the development of up to 346 apartments in two buildings and up to 12 townhouses containing 356 total dwelling units, located at 17500 Towne Crest Drive, Gaithersburg, 1990 Gaithersburg Vicinity Master Plan.

Staff Recommendation: Approval with conditions

***B. Preliminary Forest Conservation Plan Including a Request for a Tree Variance to Remove Existing Specimen Trees for Local Map Amendment G-910, Towne Crest, for the PD-44 Zone on 8.1 acres located at 17500 Towne Crest Drive, Gaithersburg, southwest of the intersection of Washington Grove Lane and Midcounty Highway, 1990 Gaithersburg Vicinity Master Plan. (Action Required for Hearing by the Hearing Examiner on 10/5/12)**

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: A. ANDERSON/WELLS-HARLEY
B. ANDERSON/WELLS-HARLEY

Vote:

Yea: A. 3-0-1
B. 4-0

Nay: A. DREYFUSS

Other: PRESLEY ABSENT

**Action: A. Contrary to the staff recommendation for approval, recommended denial of the local map amendment request, as stated in the attached transmittal letter to the County Council.
B. Approved staff recommendation for approval of the forest conservation plan, including a tree variance request, subject to conditions, as stated in the attached transmittal letter.**

In keeping with the August 30 technical staff report, Planning Department staff discussed the local map amendment request and the associated development plan seeking to rezone an 8.1-acre property in Gaithersburg from the Residential (R-30) and RT-12.5 zones to the Planned Development (PD-44) zone to permit the development of up to 346 apartment units and up to twelve townhouses, with a total not to exceed 356 units. To fully satisfy the purpose clause for the PD zone, an applicant must show that the rezoning application and development plan is in substantial compliance with the master plan and is compatible with existing and proposed uses in the surrounding area. The site is designated in the master plan as suitable for the existing 107

7. Towne Crest Apartments, LLC, Applicant

CONTINUED

units, and since the master plan's land use map designated this property as "high density residential" the current zone R-30/RT-12.5 were deemed appropriate at this location. Staff also discussed the preliminary forest conservation plan for this request and noted that the plan is in conformance with the preliminary forest conservation requirements and requests approval of a variance for the removal of four trees on site and fourteen trees offsite, which have critical root zone impact.

Mr. Steve Kaufman, attorney for the applicant, introduced members of the applicant's team, discussed the proposed request, and concurred with the staff recommendation.

The following speakers offered testimony: Ms. Georgette Cole, Mayor of the Town of Washington Grove; Mr. David Brown, attorney for the Town of Washington Grove; Mr. Charles Challstrom, Chair of the Gaithersburg Planning Commission; Mr. Bob Booher, Chair of the Gaithersburg Historic Preservation Committee; Mr. David Stopak of Brown Street; Ms. Wendy Harris of Brown Street; Ms. Shelly Winkler of Brown Street; Senator Nancy King; Ms. Lorraine Pearsall representing Montgomery Preservation, Inc.; Mr. Rick Floyd representing the Wedgewood I Homeowners Association; Ms. Joselyn Wells representing Wedgewood Court Townhouses II Homeowners Association; Ms. Alison Faupel of Washington Grove Lane; Ms. Carla Weinberg of Larchmont Terrace; Ms. Ann Briggs of Grove Road; Mr. Ted Ventresca of Maple Road; and Ms. Judy Koenick of Chevy Chase.

Commissioner Dreyfuss expressed support for the proposed redevelopment, stating that the project is good in concept, especially because it would feature structured parking instead of the highly visible surface parking that exists today. Commissioner Dreyfuss also added that he is encouraged by the applicant's stated desire to continue the provision of affordable housing that currently exists through the inclusion of Moderately Priced Dwelling Units.

Chair Carrier noted that the PD-44 zone is not appropriate at this location and that the proposed redevelopment of this site with 356 units would introduce a level of density that is not compatible with the existing residential densities in the area. More fundamentally, the proposed rezoning and

development plan are so inconsistent with the densities enumerated in the master plan, which specifically recommends eight to fifteen units per acre, that this request should not be approved as submitted.

There followed extensive Board discussion with questions to staff and the applicant's representative.

8. Preliminary Plan No. 120110050: Ashton Property

A request for subdivision to create five (5) lots for four (4) new, one family detached residential units and one (1) existing detached unit; located on the north side of Ashton Road (MD 108), approximately 3,250 feet east of the intersection with Mink Hollow Road; RC zone; 28.58 acres in the Sandy Spring/Ashton Master Plan area.

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: DREYFUSS/ANDERSON

Vote:

Yea: 4-0

Nay:

Other: PRESLEY ABSENT

Action: Approved the staff recommendation to approve, subject to revised conditions, as stated in the attached Board Resolution.

Planning Department staff presented the preliminary plan proposing five lots for four new single-family dwelling units and one existing unit, under the rural cluster optional method of development, as detailed in the staff report. Staff noted that 60 percent of the property will be preserved under a Category I conservation easement, as required for cluster development. Staff noted that the property lies within the lower Patuxent watershed, is heavily forested, and contains stream buffer area. A variance has been requested to remove trees, and staff discussed the trees to be removed and the required mitigation. In addition, the applicant requests a waiver of the requirements related to bike path construction. Staff supports the waiver, which would require dedication of property for the bikeway and a contribution to the County bikeway program, but would relieve the applicant of the burden of constructing an isolated section of bikeway that cannot connect with other bikeway segments and may create an unsafe condition. Staff made several corrections to the staff report and revisions to conditions of approval 2f and 2h.

Legal Counsel to the Board elaborated on an issue raised about the conservation easement being placed on the property in relation to an existing private non-development easement.

Ms. Casey Cirner, attorney representing the applicant, introduced the applicant team and concurred in the staff recommendation. Ms. Cirner cited her submitted letter and the attached revised plan.

Mr. Steven Kanstoroom, adjacent property owner, read into the record his submitted correspondence, raising concerns about retaining his rights under the existing easement, which was created by Court order in a settlement agreement, once the conservation easement is put in place over it.

There followed some discussion of the rights retained, respectively, by Mr. Kanstoroom and the Commission, under the two easements.

8. Preliminary Plan No. 120110050: Ashton Property

CONTINUED

The Board recessed the discussion of this item to allow time for the Board's Legal Counsel to discuss the easement rights issues with Mr. Kanstoroom and the applicant, and took up Item 5 in the interim.

Returning, Legal Counsel to the Board reported on the agreements and understandings reached among the parties, and Mr. Kanstoroom reported that he concurred and is satisfied that his rights will not be abrogated.

5. Roundtable Discussion

A. Parks' Director's Report

B. Fall 2012 Semi-Annual Report Outline

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefings as noted below, and provided guidance to staff.

A. Parks' Director's Report—Director of Parks Mary Bradford presented the Director's Report, highlighting various items in the distributed written report, including the damage and ongoing clean-up following the June 29 derecho storm, the Children's Day at Brookside Gardens and the Montgomery TennisPlex grand opening event at South Germantown Recreational Park this weekend. There followed some discussion of various issues.

B. Fall 2012 Semi-Annual Report Outline—Planning Department and Parks Department staff provided overviews of their Department's respective Semi-Annual Reports, in accordance with the submitted written outlines, and the Board provided guidance in preparation for presentation to the County Council.

10. Design Guidelines for the Approved and Adopted Wheaton Sector Plan

BOARD ACTION

Motion: **ANDERSON/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other: **PRESLEY ABSENT**

Action: **Approved the Design Guidelines for the Wheaton Sector Plan, with final revisions identified in discussion.**

Planning Department staff provided an overview of the revisions and refinements made to the Design Guidelines for the Wheaton Sector Plan, based on the Board’s guidance and notes during previous worksessions, and including some additional revisions in response to requests from the Kensington View Civic Association, as stated in the staff report.

Ms. Virginia Sheard, representing the Kensington View Civic Association, elaborated on the Association’s submitted requests for revisions.

11. Local Map Amendment No. G-908, 4825 Montgomery Lane LLC

R-60 zone, 6,525 square feet, Requesting to rezone the property from the R-60 zone to TS-R zone to include 4 multi-family units; located at 4825 Montgomery Lane at the intersection with West Lane; Bethesda-CBD (Central Business District) Master Plan

(Action Required for Hearing by the Hearing Examiner on 9/21/12)

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: **DREYFUSS/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other: **PRESLEY ABSENT**

Action: **Approved the staff recommendation to approve, with revised binding elements, and adding a binding element to restrict vehicular access to West Lane, as stated in the attached Letter of Transmittal.**

Planning Department staff presented the request to rezone a 6,525-square foot property from the R-60 zone to the TS-R Zone, for development of four multi-family units, as detailed in the staff report. Staff noted that a previous application was withdrawn because the property did not meet the minimum lot size for the zone. Since that time, the County Council has modified the development criteria, including the minimum lot size, for the TS-R and TS-M Zones, and the application now complies with the standards for the proposed zone. Staff reviewed the proposed binding elements, noting a revision to binding element number 4 in the staff report. Staff also discussed the proposed density, noting that at 27 units per acre it is lower than the minimum of 45 units per acre. However, staff cited the small size of the property, the sector plan height limit, and nearby residential uses of comparable heights with 24-36 units per acre, as justification for the proposed density. Responding to questions from the Board, staff noted that the proposed height is limited to 65 feet by restrictions in the sector plan. Staff also discussed parking, in response to an issue raised in correspondence, and noted that vehicular access is restricted to West Lane.

Mr. Marty Hutt, attorney representing the applicant, and Ms. Mimi Brodsky Kress of the applicant company, concurred in the staff recommendation. Ms. Kress also participated in the discussion and responded to questions from the Board.

12. Pre-Preliminary Plan No. 720120010, Grey Goose Farm (Discussion)

21.76 acres; RDT Zone; located on the east side of Olney-Laytonsville Road (MD 108) opposite intersection with Muncaster Road; Olney Master Plan.

Staff Recommendation: Discussion only

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Provided guidance to staff and the applicant as requested.

Planning Department staff presented a pre-preliminary plan for which the applicant is seeking nonbinding guidance on the impervious levels that can be achieved for three potential special exception uses on 21.76 acres in the RDT Zone. A portion of the property lies within the Patuxent River watershed. Within that area is a smaller portion of property that lies within the Patuxent Primary Management Area (PMA), including a tributary stream to the Hawlings River and associated stream buffers, and an adjacent area identified as the PMA transition zone. The rest of the property lies within the Upper Rock Creek watershed Special Protection Area (SPA). The Patuxent PMA establishes a limit of 0 percent imperviousness within stream valley buffers and 10 percent imperviousness for PMA transition zones outside the stream valley buffers. The Olney Master plan also limits imperviousness to

10 percent. The 8 percent impervious limit in the Upper Rock Creek SPA does not apply in this case, because the property is served by septic systems.

The property is developed with a legally non-conforming wholesale nursery with an impervious level exceeding 38 percent within the Patuxent River watershed portion of the site, with no stormwater management controls. The applicant proposes redevelopment of the property that would remove imperviousness from the stream buffer area and would reduce the imperviousness in the PMA transition zone. The applicant also proposes using an alternative method of calculating imperviousness for the site to include the entire Patuxent watershed area, (including the stream buffer areas, the transition zone, and other areas in that watershed), which could be permitted under the PMA guidelines, subject to certain findings. This would reduce the overall imperviousness in the Patuxent watershed portion of the site to 16.8 percent, but would not reduce the imperviousness in the PMA transition zone to 10 percent. Staff reviewed several methods of calculating the imperviousness, as shown in the staff report, and discussed the proposed alternative calculation and how the required findings of maintaining community character, achieving compatibility, and/or accomplishing master plan goals could be addressed.

Mr. Steve Orens, attorney; Mr. Mike Norton, consultant; and Mr. Donnie Whitmeyer, the applicant, discussed the proposal, emphasizing that the redevelopment would remove the

12. Pre-Preliminary Plan No. 720120010, Grey Goose Farm (Discussion)

CONTINUED

imperviousness from the stream valley buffer, significantly reduce the imperviousness in the Patuxent watershed, and provide stormwater management facilities.

Ms. Diana Conway, representing the Montgomery Countryside Alliance, the Audubon Naturalist Society, and Patuxent River Keepers, offered comments.

In discussion, Chair Carrier and Vice Chair Wells-Harley said that they would require adherence to the 10 percent impervious limit. Commissioners Anderson and Dreyfuss stated that they would be willing to consider some flexibility on the impervious limit.