

APR 7 2011



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

MCPB No. 10-172
Preliminary Plan No. 120100160
Anselmo Property
Date of Hearing: December 9, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on March 1, 2010, Michael Anselmo et. al., Trustee ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 38 lots on 42.28 acres of land in the RE-1 zone and to provide 12.5% of the units as Moderately Priced Dwelling Units (MDPU's), on a property located at the southern terminus of Rainbow Drive on the north side of Briggs Chaney Road ("Property" or "Subject Property"), in the Cloverly Subregion master plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120100160, Anselmo Property ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 29, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 9, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on December 9, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 4-0, Commissioners Alfandre, Carrier, Presley and Wells-Harley voting in favor. Commissioner Dreyfuss was absent from the Hearing.

Approved as to
Legal Sufficiency:

 3/23/11
M-NCPPC Legal Department

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120100160 to create 38 lots for 33 one family detached homes and 5 one family attached MDPU townhomes in the RE-1 zone using the MPDU optional method of development on the Property, subject to the following conditions:

1. Approval under this Preliminary Plan is limited to a maximum of 38 lots for 38 dwelling units consisting of 33 single-family detached units and 5 single-family attached units.
2. The Applicant must comply with the following conditions of the SPA Preliminary Water Quality Plan:
 - a. Prior to recording of plat, applicant must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 8.0 percent, which shall include the impervious surfaces in the entire gross tract area, including the Property and the land area between the right-of-way/property line and the edge of the pavement of Briggs Chaney Road along the Property frontage.
 - b. Prior to release of building permit, applicant must demonstrate conformance to the impervious surface limit. Any modifications which increase imperviousness beyond 8% will require Planning Board approval.
 - c. Applicant must conform to the conditions as stated in the Montgomery County Department of Permitting Services (DPS) water quality plan approval letter dated October 26, 2010.
 - d. Final Water Quality Plan must demonstrate Project will not exceed 8.0 percent imperviousness.
3. The Applicant must comply with the Preliminary Forest Conservation Plan and the following conditions:
 - a. Category I conservation easement must be placed over all areas of forest retention, forest planting, and environmental buffers, including proposed and future forest banking areas.
 - b. Provide permanent signs along the boundaries of the Category I conservation easement area.
 - c. Forest plantings must be provided over all unforested stream buffers.
 - d. Submission of a final forest conservation plan consistent with section 109.B. of the forest conservation regulations at the time of Site Plan.
 - e. Final forest conservation plan to include a program for restoring "Forest Save A" area that includes the removal of the existing ATV trails and debris.
 - f. Final forest conservation plan to include identification of all trees within the environmental buffer that would be subject to

protection under Section 5-1607(c) of the Natural Resources Article, MD Ann. Code based on the determination of the critical root zone (CRZ) according to the following accepted formula: 1 inch DBH = 1.5 feet radius of the CRZ. If any trees are identified as requiring a variance under Section 22A-21 of the Montgomery County Code that and were not included on the original variance request, an amendment to the variance may be required at the time of Site Plan and Final FCP approval.

4. The Applicant must dedicate and show on the record plat the following rights-of-way along the property frontage:
 - Briggs Chaney Road – minimum right-of-way width of 40 feet from the centerline of the right-of-way.
 - Rainbow Drive – minimum modified right-of-way width of 68 feet.
 - Public Street “A” – minimum right-of-way width of 68 feet.
5. The Applicant must construct the section of Rainbow Drive between its current terminus and Public Street “A” to 68 foot primary roadway right-of-way standards and Public Street “A” to 68 foot tertiary right-of-way standards.
6. The Applicant may limit sidewalk along Public Street “A” to the north side of Public Street “A” and along the north half of the Public Street “A” cul-de-sac, if a waiver is obtained through DPS and a payment in-lieu is made for the remainder of the sidewalk along the south side of Public Street “A” and along the south half of the Public Street “A” cul-de-sac.
7. The Applicant must construct a five-foot wide asphalt pathway through the property to connect Briggs Chaney Road and the new Rainbow Drive terminus/Public Street “A”, and an eight-foot wide shared-use path where it is incomplete along the Briggs Chaney Road property frontage, as shown on the Preliminary Plan. The paths must be in place and open for public use prior to the release of a building permit for the 20th single-family dwelling unit.
8. The record plat must reflect a Category I easement over all areas of stream valley buffers and forest conservation.
9. The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
10. The record plat must reflect a public use and access easement over all private pathways.
11. The record plat must have the following note: “The land contained hereon is within an approved cluster development, and subdivision or resubdivision for additional lots is not permitted after the property is developed.”

12. The record plat must reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant") in the Montgomery County Land Records. Applicant must provide verification to Staff prior to release of final building permit that Applicant's recorded HOA Documents incorporate by reference the Covenant.
13. The Applicant must comply with the conditions of the MCDPS stormwater management approval dated October 26, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
14. The Applicant must comply with the conditions of the MCDOT letters dated November 1, 2010 and November 17, 2010. These conditions may be amended by MCDOT provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
1156. Before any building permit is issued, the Applicant must make the applicable school facilities payment at the elementary school level to MCDPS.
16. No clearing, grading or recording of plats prior to certified site plan approval.
17. Final approval of the number and location of dwelling units, on-site parking, site circulation, sidewalks, pathways, and bikepaths will be determined at site plan.
18. The certified preliminary plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of site plan.
19. The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.
20. The record plat must show necessary easements.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein or at the Hearing) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the master plan.*

The Planning Board finds that the Preliminary Plan is in conformance with the 1997 Approved and Adopted Cloverly Master Plan. The Master Plan makes the following relevant land use recommendations regarding residential areas.

- i. *Join new development with existing neighborhoods through street and pedestrian connections. Interconnections between neighborhoods creates a greater sense of community by eliminating barriers for local circulation without creating cut-through routes that attract an excessive level of cut-through traffic.*

The Preliminary Plan makes two important pedestrian links along and to Rainbow Drive. The off-site link to the north to Valencia Street will require the Applicant to make a payment to the approved Capital Improvement project for a sidewalk along other portions of Rainbow Drive. Although this off-site section is not currently funded in the CIP project, it will provide a critical missing link. The County will use these funds to pay for this off-site section to be built.

The other critical pedestrian connection provides for a pathway through the Subject Property that runs from the terminus of Rainbow Drive to Briggs Chaney Road and is required to be five feet wide as opposed to the four foot width shown on the Preliminary Plan. This pathway is critical to provide pedestrian connections for the neighborhoods to the north, to the Cloverly Park, the elementary school and the shopping center at the Briggs Chaney Road intersection with New Hampshire Avenue.

- ii. *Encourage clustering of development to provide open space that protects natural resources, provides recreation, and contributes to the rural and residential atmosphere. Cluster subdivision should be configured to protect environmentally sensitive areas, provide forested stream buffers and provide forested open space along arterial and major highways, provide access and views to parkland and open space and provide a transition to similar lots sizes of adjacent subdivisions.*

The Plan uses the optional method of development under the MPDU provisions which allows smaller lots and higher density than might otherwise be possible for a subdivision using the standard method of development under the RE-1 zone. Although this Plan does not take advantage of the density bonus allowance (due to imperviousness limits) it does take advantage of the smaller lot sizes to compact the dwelling footprints, roads and sidewalks to minimize imperviousness. This *de facto* clustering made possible under the optional MPDU method provides considerable open space that leaves large upland areas undeveloped, protects all forest on the property, and keeps disturbance out of the stream valley buffer that bisects the Property. The cluster also allows this development to maintain an open space buffer between the new lots and the existing lots to the north along Valencia Street.

- iii. *Extend the opportunity to use the cluster option to all RE-1 zoned properties to encourage open space, environmental protection and recreation.*

As discussed above, the Applicant takes advantage of the smaller lot sizes to cluster development in the most developable area of the site. All environmentally sensitive features on the Property are protected and ample open space is created.

The Master Plan goes on to recommend that all new development in the Upper Paint Branch should "implement and strictly enforce the requirements and guidelines of the Special Protection Area Law and the 1981 Performance Criteria for any land developed in the Upper Paint Branch watershed including a 10 percent (now 8%) imperviousness limits for individual properties and additional setbacks from streams, wetlands, springs, and seeps to reduce the impacts of development in the watershed." The Plan has a projected imperviousness of approximately 8 %, which conforms to the Master Plan guidance.

The Cloverly Master Plan supports the improved interconnection of streets and an improved bikeway system. The Plan's objective for pedestrian circulation is to "provide a sidewalk network that connects residential areas to public facilities, commercial areas, and bus stops." The pedestrian circulation recommendations include the following:

- iv. *Provide sidewalks on both sides of new roads and when existing roads are being improved. The construction of sidewalks and paths along one side of the road may be acceptable to limit environmental impacts.*

The Plan proposes sidewalks to be built on one side of the new streets only in response to efforts to minimize imperviousness. Staff and the Montgomery County Department of Transportation support the sidewalks on one side of the street only and the Planning Board concurred with this recommendation.

- v. *Connect existing sidewalks to public facilities, commercial areas, bus stops, neighborhoods and other sidewalks.*

In recognition that the pathway through the site is an important pedestrian link, the Planning Board required the Applicant to provide a five foot wide sidewalk connecting Rainbow Drive with Briggs Chaney Road.

- vi. *Use asphalt paths, where practical, to help maintain Cloverly's rural character. It is important that the existing character of the neighborhood be preserved if sidewalks are constructed along residential streets. The use of concrete*

sidewalks may be appropriate to maintain safety where paths are located directly adjacent to open section roads or where connections are made to other concrete sidewalks.

An asphalt path is envisioned to connect Rainbow Drive to Briggs Chaney. Sidewalks along the internal roadways are to be concrete to match the approved CIP project on Rainbow Drive.

The Planning Board finds the Preliminary Plan to substantially conform to the recommendations of the Cloverly Master Plan with respect to the Subject Property. The project will be an extension of an existing neighborhood that clusters development to the maximum extent possible so that large areas of open space can be saved and environmental resources are protected. Roadways and internal sidewalks provide both vehicular and pedestrian circulation for this project as well as adjacent communities.

- 2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

Transportation

A traffic study was required for the Application per the Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines since it is estimated that the proposed development will generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods. The Applicant submitted a traffic study dated November 17, 2009, that determined that the proposed development would generate approximately 34 total trips during the weekday morning peak-hour, and 40 total trips during the weekday evening peak-hour.

Local Area Transportation Review

An analysis of the Critical Lane Volume (CLV) results for the intersections included in the traffic study for the weekday morning and evening peak-hours was conducted by Staff and provided in the Staff Report. Under Total (Build) traffic conditions, CLV values for intersections included in the study are below the Cloverly Policy Area congestion standard (1,450 CLV). Based on this determination, the Planning Board finds the Preliminary Plan satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

The Cloverly Policy Area is currently operating under "acceptable" conditions according to the Growth Policy established under PAMR and does not require mitigation of any "new" site-generated peak-hour trips. Based on this, the Planning Board finds the subject preliminary plan satisfies the PAMR requirements of the APF test.

Adequacy of rights-of-way

The Preliminary Plan was reviewed by Staff and staff of the Montgomery County Department of Transportation (MCDOT). The Planning Board finds that the right-of-ways shown on the plan will provide adequate access for vehicular traffic and adequate room for the necessary road cross-section improvements. The extension of Rainbow Drive into the site will be accommodated within a 68 foot wide right-of-way with 20 feet of pavement and open section drainage swales on each side of the street, in accordance with MCDOT design standards. Five designated on-street parking spaces will be provided for overflow visitor parking. Fire and rescue services will prohibit parking of vehicles on the street itself due to fire code standards that require 20 feet of unobstructed pavement to allow emergency apparatus to extend side stabilizers.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the dwelling units in the subdivision. The County Council approved a conditional water and sewer category change for the Property from Category W-6 and S-6 to W-3 and S-3. The approval was conditioned on the Planning Board approval of a preliminary plan using the cluster method of development showing that cluster and the use of community sewer would result in an environmental benefit compared to a plan on standards septic systems. As supported by the Staff Report, the clustering of smaller lots greatly reduced the development envelope on this Property, thereby allowing significant areas of the Property outside of the environmental buffers to remain free of development impacts. This could not be done had the sewer not been provided because the cluster development option in the RE-1 zone is not possible without community sewer. The Board was satisfied that the cluster development and layout shown on the Preliminary Plan protects additional upland areas in open space, which would not have been possible under a standard method layout using septic systems.

Washington Gas, PEPCO and Verizon have all recommended approval of the Preliminary Plan finding that they can adequately serve the site with their respective utility. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as

schools, police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy Resolution currently in effect. The Application is not within a school moratorium area; and is not subject to payment of School Facilities Payment.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The lots conform to Master Plan guidance for cluster lots in the RE-1 zone. Based on a review of the lot layout in relation to adjacent subdivisions and the recommendations of the Master Plan for this area, the Board finds the lot size, width, shape and orientation to be appropriate for the location of the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features.*

A. Environmental Guidelines

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) #420100250, which identifies the environmental constraints and forest resources on this Property was approved on November 3, 2009. A stream, three wetland areas, and associated environmental buffer lie in the south-central portion of the site. The 10.26-acre environmental buffer includes some field cover, tree cover, and 3.45 acres of forest cover.

There are 43 trees on the Property outside the environmental buffer which are 24 inches or greater DBH. The site's topography is gently sloping, with minimal steep slopes along the stream banks and in the eastern part of the site adjacent to an offsite driveway near Colesberg Street. There is an existing gravel driveway that crosses the stream and the environmental buffer. A pedestrian path is proposed in the general location of the existing driveway.

The Board considered the plan layout with respect to the protection of the environmentally sensitive areas on the Property and finds that the MPDU optional method of development provides superior protection of the resources identified on the NRI/FSD. All stream valley buffers are protect as are the forest resources on site. In addition, the Preliminary Plan preserves upland open space areas that otherwise would be available for development had the Application not used the optional method of development.

B. Forest Conservation Plan

The Preliminary Forest Conservation Plan proposes to clear approximately 0.46 acres of existing forest. This area of isolated forest is a separate stand located in the north-central portion of the Property. It currently resembles an overgrown hedgerow located between open fields. This forest does not contain any environmentally sensitive features and has been classified as low priority forest. The remaining 8.66 acres of forest will be retained. There is a 0.92-acre reforestation requirement that is proposed to be met by forest planting in the environmental buffer. The remaining 5.63-acre portion of the buffer that is currently unforested will also be planted in forest. This is consistent with the Planning Board's "Environmental Guidelines": The guidelines recommend that a development plan in a SPA should reforest the entire environmental buffer that is onsite, even if the reforestation exceeds the development's forest planting requirements under the Forest Conservation Law. Credits associated with the excess planting area may be created and sold to others to meet their offsite requirements.

C. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require seven Protected Trees, 30 inches and greater DBH to be removed. Therefore, a variance is required.

The Board made the following findings necessary to grant the Tree Variance:

1. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

All of the affected trees except for one (Tree 17 as identified in the Staff Report) are located within the limited buildable area of the Property. They are located in the part of the site that is outside of forest and environmentally sensitive areas, and in the area that contains existing improvements. Tree 17 is located within an isolated, low priority forest area that is an overgrown hedgerow. In addition, the Special Protection Area (SPA) requirement of a

regulatory impervious limitation promotes the compact layout design for this subdivision, limiting the ability to retain individual trees on the property.

2. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of specific actions by the Applicant outside the norm of a development application allowed under the applicable zoning and associated regulations. The requested variance is based on the proposed site layout that is utilizing area that is outside of existing forest, with the exception of the low priority "hedgerow" forest, or outside of other environmentally sensitive areas (i.e., environmental buffer), and a design that proposes to minimize the impervious area to comply with the SPA overlay zone requirements.

3. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

4. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not within a stream buffer or a wetland. A Stormwater Management Concept Plan utilizing various ESD practices is proposed for the property. The project is required to be designed in accordance with the most recent revisions to the Maryland Department of the Environment (MDE) Manual. In addition, the applicant is required to plant all stream buffers which will result in more onsite forest than currently exists. This will provide additional water quality benefits.

D. Forest Conservation Variance Mitigation

The Board agreed with the Staff recommendation that additional mitigation for the loss of the seven trees is not required. Four of the seven trees that will be removed were determined to be in either fair or poor condition. All of the trees are located in the area that is most suitable for the development to occur, in that the overall environmental impacts are minimized. In addition, 4.71 acres of

reforestation is proposed within the environmental buffer to meet the SPA requirement; this exceeds the 0.92 acres of reforestation required by the forest conservation law to mitigate for the proposed forest clearing.

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law

5. *The Property is located in the Upper Paint Branch Special Protection Area (SPA). The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on a determination that the Montgomery County Department of Permitting Services ("MCDPS") has reviewed and conditionally approved the elements of the SPA water quality plan under its purview.*

SPA Site Performance Goals

As part of the water quality plan, the following performance goals were established for the site: stream/aquatic life habitat protection, maintain stream base flow and maintain groundwater recharge, protect seeps, streams and wetlands, maintain natural onsite stream channels, minimize storm flow increases, identify and protect stream banks prone to erosion and slumping, minimize increases to ambient water temperature, minimize sediment loading, minimize nutrient loadings, and control insecticides, pesticides and toxic substances.

Stormwater Management Concept

The use of various ESD practices including micro bio retention, bio swales, grassed swales, landscape infiltration areas, dry wells, rooftop disconnections, rain gardens, and sheet flow to conservation will provide channel protection and water quality control. The project is required to be designed in accordance with the most recent revisions to the Maryland Department of the Environment (MDE) Manual. With the approval of the preliminary water quality plan, the Board finds that the Preliminary Plan complies with the Subdivision Regulations requirement to address stormwater management.

Sediment and Erosion Control

Redundant sediment control measures are to be used where practical, and the total storage volume for sediment traps shall be 125% of the normally required volume. Primary sediment and erosion control for this project will be provided via earth dikes and a sediment trap or basin. The use of silt fence alone will not be

allowed as a perimeter control measure. MCDPS is requiring the use of super silt fence around small areas of disturbance.

Monitoring of Best Management Practices

Stormwater monitoring is required for this project. The details of the monitoring requirements will be determined during the review of the Final Water Quality Plan

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

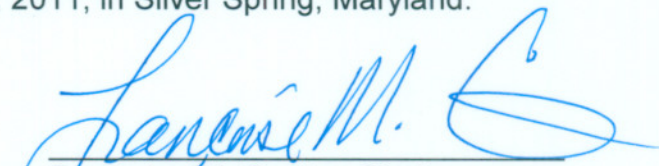
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 7, 2011 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion at its regular meeting held on Thursday, March 31, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board