



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

MCPB No. 16-083  
Preliminary Plan No. 120160050  
8008 Wisconsin Avenue  
Date of Hearing: July 28, 2016

SEP 16 2016

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, under Section 59-7.7.1.B.3 of the Zoning Ordinance, the Planning Board reviewed this application under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect, and

WHEREAS, on December 4, 2015, Jemal's Surplus, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 13,962 net square feet of land in the CBD-1 zone, located in the southwest quadrant of the intersection of Wisconsin Avenue and Cordell Avenue ("Subject Property"), in the Bethesda CBD Policy Area and *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120160050, 8008 Wisconsin Avenue ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 15, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 28, 2016, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 28, 2016, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Wells-Harley voting in favor. Commissioner Dreyfuss was absent from the hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES

Approved as to  
Legal Sufficiency:

 8/2/16

8787 Georgia Avenue, Bethesda, Maryland 20814 Chairman's Office: 301.495.4605 Fax: 301.495.1320

MNCPPC Legal Department  
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Preliminary Plan No. 120160050 to create one lot on the Subject Property, subject to the following conditions:<sup>1</sup>

1. This Preliminary Plan is limited to one lot for a maximum of 150,375 square feet of multi-family residential use consisting of 106 multi-family dwelling units, including 15% Moderately Priced Dwelling Units ("MPDUs"), and 5,793 square feet of non-residential uses.
2. The Applicant must comply with the conditions of approval for Project Plan No. 92015002A.
3. Include the stormwater management concept approval letter, forest conservation exemption letter, and Preliminary Plan Resolution on the approval or cover sheet(s).
4. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated June 24, 2016, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
5. Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated May 2, 2016, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. The Applicant must dedicate and show on the record plat(s) the following dedications:
  - a. Wisconsin Avenue (MD 355): A dedication of 13.5 feet to provide 61 feet between the property line and right-of-way centerline to support a master-planned future right-of-way of 122 feet.

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

- b. Woodmont Avenue: A dedication of 5 feet to provide 40 feet between the property line and right-of-way centerline to support a master-planned future right-of-way of 80 feet.
8. The plat must show a ten-foot-wide public improvement easement granted to the Maryland State Highway Administration ("MDSHA"), or another instrument approved by MDSHA, along the entire Wisconsin Avenue frontage.
  - a. Prior to recordation of the plat, the Applicant must provide, for review and approval by Staff, the public improvement easement in a recordable form.
  - b. The liber and folio of the recorded public improvement easement must be noted on the plat.
  - c. The easement must be volumetric, encompassing the space from the top of the underground parking garage below to the bottom of the building overhang above.
  - d. The Applicant must maintain the area within the public improvement easement at its expense.
  - e. The Applicant must keep the sidewalk and other pedestrian areas within the public improvement easement free of snow, litter, and other obstructions and hazards at all reasonable times, at its expense.
9. 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 approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval.
10. The record plat must show necessary easements.
11. Final number of MPDUs as per condition #1 above will be determined at the time of site plan approval.
12. Prior to issuance of any above-grade building permit, the Applicant must provide certification from an engineer specializing in acoustics that the building shell has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn and must commit to construct the units in accordance with these design specifications, with

any changes that may affect acoustical performance approved by the acoustical engineer in advance of installation.

13. Prior to certification of any site plan, the Applicant must submit for Staff approval the details for and location of noise mitigation techniques to attenuate current noise levels to no more than 65 dBA Ldn for areas of common outdoor activity.
14. After construction is complete, and prior to issuance of final residential occupancy permits, the Applicant must provide Staff with a certification from an engineer specializing in acoustics confirming that the dwelling units were constructed in accordance with the approved specifications for noise attenuation.
15. Prior to submission of any plat, Site Plan No. 820160130 must be certified by Staff.
16. No clearing or grading of the site, or recording of plats prior to certified site plan approval.
17. Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, and sidewalks will be determined at site plan.
18. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution. This APF approval supersedes any existing APF agreement for the Subject Property.

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

1. *The Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property is located within the *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan* area. The Application substantially conforms to the recommendations in the Sector Plan in the following ways:

The primary objectives of the Sector Plan are to encourage redevelopment in order to provide housing opportunities and to retain small-scale retail through the allowance of transfers of density between properties in

Woodmont Triangle, thereby achieving a vibrant, urban, mixed-use neighborhood that emphasizes residential uses, small-scale retail, the arts, and public amenities.

The Subject Property is identified as the “Troiano property” in the Sector Plan (page 21). Accordingly, the Subject Property is recommended for the CBD-1 Zone and up to 143 feet of height with the 22% bonus density. As designed, the Application maximizes the potential for development on the Subject Property, including the MPDU density bonus and density transfer from the sending properties, by building out to a maximum of 156,168 square feet and up to 143 feet in height. This utilization of the density potential of the Subject Property (which also allows the preservation of small-scale retail elsewhere in the Woodmont Triangle) is in accordance with the goals and objectives of the Sector Plan. Furthermore, the Application is predominantly residential in nature, devoting only approximately 3% of the total building to non-residential uses and concentrating those uses on the Woodmont Avenue frontage to create synergies with the existing Woodmont Triangle retailers.

The Application conforms to the goals, recommendations, and design guidelines provided by the Sector Plan for the Subject Property as follows:

- Transit-Oriented Development.

Being within walking distance of both the Bethesda and Medical Center Metrorail Stations, as well as several bus lines, the Subject Property is ripe for transit-oriented development, and the Application, through its mix of uses, amenities, limited on-site parking, and enhancement of pedestrian connectivity, provides a model for transit-oriented development. Further, a bus stop is directly in front of the Subject Property on Wisconsin Avenue. Moreover, the Application is designed to accommodate the proposed MD 355 South corridor of the BRT introduced in the *Countywide Transit Corridors Functional Master Plan* (“Functional Master Plan”). To that end, the Applicant is dedicating 13.5 feet to accommodate the 122-foot right-of-way referenced for BRT in the Functional Master Plan, and the building’s ground floor is set back approximately 35 feet from the existing curb to accommodate future construction of the BRT line and station. Accordingly, should the BRT line be funded and constructed, the Application will provide ample space to accommodate the additional right of way required to support that transit system. Until that time, the Application will provide an expansive, approximately 35-foot setback from the curb on Wisconsin Avenue that will support pedestrian circulation throughout the Woodmont Triangle.

- Housing – Provide opportunities to increase the supply of housing to serve a variety of income levels.

The Application provides up to 106 multi-family residential units, with 15% on-site MPDUs, resulting in the maximization of the Subject Property for increasing the supply of housing for a variety of income levels, in the Woodmont Triangle area. The Application is receiving a 22% residential density bonus for providing 15% MPDUs.

- **Small-Scale Retail** – Provide opportunities to retain existing businesses and expand opportunities for new businesses.

The Application provides a street-activating, non-residential component along Woodmont Avenue. The commercial area of the project is flexible enough that it may provide opportunities for small and large retail or restaurant establishments. In addition, through the utilization of the density transfer provisions critical to the success of the Sector Plan, small-scale retail sites will be preserved by transferring un-utilized density to the Subject Property for inclusion in the Application, protecting and preserving the small-scale retail on the sending sites through recordation of appropriate documents in the land records.

- **Arts and Entertainment District** – Enhance the existing public arts programs in the Bethesda CBD and provide opportunities for both the visual and performing arts.

The CBD's public arts character is intended to be enhanced by the entrance feature along Wisconsin Avenue as well as the streetscape along Wisconsin, Cordell, and Woodmont Avenues. The Application features a contrasting paver apron along these streets, creating an artistic edge along the standard Bethesda Streetscape and vegetated amenity zone, as well as durable outdoor furniture along Cordell Avenue. Furthermore, the Application provides artistic paving banding, linear benches and planters within the Woodmont Avenue plaza area. Also, by providing in-grade lighting elements along the Woodmont and Cordell Avenue street frontages, the Application will enhance the area's aesthetics. The variety of seating options, rich material palette and playful lighting will create an active, multi-season outdoor space that will enhance the Woodmont Triangle's existing public arts character.

- **Safe and Attractive Streets** – Focus on improving the safety and character of the existing streets.

The Application will improve the safety and character of the adjacent streets by (1) providing new, contrasting paver aprons and the Bethesda Streetscape Standard paving, lighting and street trees for the Subject Property frontages; (2) activating the streets both during the day as well as the evening hours with an influx of new residents and retail opportunities; (3) creating an

attractive and well-lit pedestrian experience along Wisconsin, Cordell, and Woodmont Avenues; and (4) ensuring that the loading and vehicular access areas on Cordell Avenue are safe and efficient.

Further, the Subject Property will dedicate approximately 13.5 feet of frontage along Wisconsin Avenue to bring the Wisconsin Avenue right-of-way to the 122 feet recommended in the Functional Master Plan, and it will provide an additional 10-foot easement to the Maryland State Highway Administration, further pulling the ground floor of the building back another 10 feet from the existing curb. Also, in accordance with the Sector Plan, the Applicant will dedicate an additional 5 feet along Woodmont Avenue to bring the right of way to the 80 feet recommended in the Sector Plan. With these dedications, until the BRT is constructed, the width of the sidewalk along Wisconsin Avenue will be approximately 35 feet, of which approximately 10 feet will be within the Subject Property and approximately 25 feet will be from the property line to the curb. Furthermore, the Application provides substantial improvements to the existing streetscape and pedestrian network along Cordell Avenue and the east side of Woodmont Avenue, including an activated plaza area within the Subject Property along Woodmont Avenue. The streetscape improvements along Wisconsin, Cordell, and Woodmont Avenues will create sizeable setback and sidewalk areas that will promote pedestrian activation as well as safe and attractive streets. Finally, the Applicant has submitted a sight distance evaluation that concludes that the driveway locations and intersection truncation reductions provide sufficient sight distance.

- **Public Amenities** – Increase the flexibility in providing the public use space through the optional method of development by allowing off-site and on-site fulfillment of this requirement, and by identifying a list of priority public amenities.

The Application provides 2,918 square feet of on-site public use space and 4,784 square feet of off-site public amenity space. The Application's public use space is provided both in the 10-foot public improvement easement area between the ground floor of the building and property line on Wisconsin Avenue and the plaza along Woodmont Avenue. The Application addresses several of the identified priority projects for public amenities in the Sector Plan area. In particular, it will enhance the pedestrian experience and connectivity along Cordell and Woodmont Avenues, and it will provide distinctive street lights as well as other festive, in-ground lighting features along Cordell Avenue and in the Woodmont Avenue plaza area. The Application includes benches, bike racks, trash receptacles, and streetscape design that will improve the pedestrian experience in the area. Furthermore, the plaza along Woodmont Avenue can accommodate outdoor seating if a restaurant use is located on the ground floor of the building. However, due to the Subject Property's small size and

accommodation of the proposed BRT station, the Applicant will pay a fee-in-lieu or provide off-site public use space for the amount of required public use space that cannot be provided on the Subject Property.

In terms of off-site public amenities, the Applicant is providing the Bethesda Streetscape Standard sidewalk, planting zones, tree amenity zone and furniture within the rights-of-way along Wisconsin, Cordell, and Woodmont Avenues.

- Provide a range of housing opportunities, including new low-rise and high-rise housing, to serve a variety of income levels.

As envisioned in the Sector Plan, the Application will provide a 143-foot, 14-story, high-rise building, containing up to 106 multi-family residential units, of which 15% will be MPDUs. Different unit sizes will ensure that the project serves a variety of residents at varying levels of income.

- Mixed-Use Development – Density; FAR; Public Use Space.

The Sector Plan strives to produce mixed-use projects that are primarily residential, capping non-residential uses to 1.0 FAR, and that provide meaningful on-site public amenities or, alternatively, contribute to public use space elsewhere in the Woodmont Triangle if more suitable to creating dynamic spaces. The Application achieves maximum FAR through density transfers and the 22 percent MPDU bonus on the residential density, limiting non-residential uses to the ground floor along Woodmont Avenue (which serves to activate the area). The on-site public use space and off-site public amenity space will provide additional public benefits to people who live, work, and/or visit in the Woodmont Triangle. Furthermore, the Application will provide sufficient right-of-way so that if the BRT is constructed in the future, it will be accommodated. Such transit oriented development further enhances the mixed-use, density, and public space vision of the Sector Plan.

The Sector Plan establishes the following urban design guidelines, to which the Application appropriately responds as described:

- Design new buildings so that public streets and spaces retain adequate sunlight.

Since the spaces and streets lie to the north, east and west of the building, as designed, the Application will cast limited shadows on public streets and/or active public spaces and will retain adequate sunlight.



- Provide sufficient building setbacks to adequately accommodate pedestrians and streetscape improvements.

The Application provides sufficient building setbacks and incorporates contrasting paving and the Bethesda Streetscape Standard improvements along all three Subject Property frontages. In particular, the ground floor of the building is set back from the existing curb on Wisconsin Avenue by approximately 35 feet, creating an expansive setback and sidewalk area that will adequately accommodate pedestrian and streetscape improvements. On Cordell Avenue, the Application provides almost 15 feet of sidewalk between the building face and the curb. On Woodmont Avenue, the truncated corner of the building is set back approximately 30 feet from the Woodmont Avenue curb. In total, the Application provides 1,427 square feet of new right-of-way dedications to adequately accommodate proposed improvements on Wisconsin Avenue (future BRT) and Woodmont Avenue (proposed bike lane).

- Review new projects for compatibility with existing uses and to ensure animation of the first floor space through use of retail, restaurant, or other activating uses.

The Application will be compatible in design, massing, and uses to the surrounding land uses. The exterior building materials will reflect similar materials that exist around the neighborhood, and the use of glass, metal, colors, and textures layered with masonry is contextual with the surrounding architectural language. The Application's emphasis on transparency in the public spaces on the ground floor is also harmonious with the other adjacent buildings.

Furthermore, the Application will ensure animation of the first floor space by providing first-floor commercial space along Woodmont Avenue and a residential entrance, entrance feature, architecturally interesting building overhang, and new lighting along Wisconsin Avenue that will promote a dynamic pedestrian realm.

- Provide the Bethesda streetscape on other streets in the study area.

The Bethesda Streetscape will be constructed along all three street frontages – Wisconsin, Cordell, and Woodmont Avenues.

- Establish a network of diverse urban spaces including public use space on-site.

The Application provides 2,918 square feet of on-site public use space designed in a network of diverse urban spaces, including the revitalized and enlivened streetscape along Wisconsin and Cordell Avenues to the new public

plaza area along Woodmont Avenue. With the paving, planters and linear benches, the network of public spaces flanking the building is designed to be inviting and to feel like an extension of the sidewalk. The Application also provides 4,784 square feet of off-site public amenity space including Bethesda Streetscape paving and seating to make the open space serve as both a gathering spot and a pedestrian access way.

- Provide public art, art facilities, and public gathering spaces. The arts-related space needs could include the following:
  - Arts incubator space – A stand-alone building or portion of a building open to the public to provide studio space for emerging visual and performing artists.
  - Exhibit, teaching and lecture space – Flexible space within existing or new buildings for a variety of functions.
  - Space for the arts, such as dance studios, a black box theater, and live/work space for artists that could be leased at moderate rates to non-profit arts organizations.

While the Application will not provide any public art piece due to the constrained size of the Subject Property, it does provide engaging architecture and an outdoor plaza along Woodmont Avenue that will include a variety of seating options, the rich material pallet and playful lighting design. The plaza along Woodmont Avenue could become a public gathering place that could be utilized for arts-related gatherings.

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

### Transportation

A traffic study, dated August 11, 2015, was submitted for the Application per the *Local Area Transportation Review ("LATR")/Transportation Policy Area Review ("TPAR") Guidelines* since the development was estimated to generate more than 30 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. A site trip generation summary for the development, provided in the Staff Report, shows that the Application will generate 41 new peak-hour trips during the weekday morning peak period and 37 new peak-hour trips during the weekday evening peak period. That traffic study was supplemented with a traffic statement, dated March 10, 2016, to amend the land use in the following manner: up to 106 high rise dwelling units (34 dwelling units fewer than the previous approval) and up to

5,793 square feet of general retail space (1,293 square feet more than the previous approval). As a result of the new land use densities, the Application is estimated to generate nine fewer net new trips in the morning peak hour (32 morning peak hour trips) and seven fewer net new trips during the evening peak hour (30 morning peak hour trips). The study intersection critical lane volumes were not updated to show this small revision and, as a result, reflect the more conservative (higher) trip generation assumed in the original traffic study.

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis for the weekday morning and evening peak-hour periods, presented in the Staff Report, shows that the total (Build) condition will remain within the policy area congestion standard of 1,800 CLV. Based on the analysis presented in the traffic study, the Application will satisfy the LATR requirements of the APF test.

Since the development is within the Bethesda CBD Policy Area, the Application is exempt from both the roadway and transit tests set forth in the 2012-2016 *Subdivision Staging Policy*. As a result, the development satisfies the TPAR requirement without making a mitigation payment.

#### Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, schools, and health services are operating according to the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Subject Property. Electrical, telecommunications, and gas services are also available to serve the Subject Property.

- 3. The size, width, shape, and orientation of the approved lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated.*

The Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The size, width, shape and orientation of the lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated. As discussed above, the Application substantially conforms to the *Woodmont Triangle Amendment to the Bethesda*

*CBD Sector Plan.* The Application complies with the land use recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. As evidenced by the Application, the Subject Property is sufficiently large to efficiently accommodate the mix of uses.

The lot was reviewed for compliance with the dimensional requirements for the CBD-1 zone as specified in the Zoning Ordinance. The lot will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the Application.

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

- A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application is subject to the Forest Conservation Law; however, it qualifies for a Forest Conservation Exemption under Section 22A-5(s)(2) as a small property exemption. Forest Conservation Exemption 42014180E was confirmed for the Application on June 3, 2014.

5. *All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-20 through 19-35.*

This finding is based in part upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

The MCDPS Stormwater Management Section approved the stormwater management concept on May 2, 2016. According to the approval letter, the stormwater management concept meets stormwater management requirements via environmental site design to the maximum extent practicable through the use of green roofs and micro-bioretenention planter boxes.

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)), 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 in the Montgomery County Land Records, 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 SEP 16 2016 (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).

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**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 Vice Chair Wells-Harley, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Cichy voting in favor, and Commissioners Dreyfuss and Fani-González absent at its regular meeting held on Thursday, September 8, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board