



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, May 16, 2013, at 9:07 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 9:27 p.m.

Present were Chair Françoise M. Carrier, Vice Chair Marye Wells-Harley, and Commissioners Casey Anderson, Norman Dreyfuss, and Amy Presley.

Items 1, 3, 5, 6, and 12, discussed in that order, are reported on the attached agenda.

The Board recessed for lunch at 12:35 p.m. and to take up Item 7 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 12:50 p.m. in the third floor conference room, on motion of Commissioner Anderson, seconded by Vice Chair Wells-Harley, 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 Annotated Code of Maryland, State Government Article, §10-508(a)(7) to consult with counsel to obtain legal advice.

Also present for the Closed Meeting were: Acting Director Rose Krasnow, Robert Kronenberg, and John Marcolin of the Planning Department; Associate General Counsels Carol Rubin and David Lieb of the Legal Department; and Clara Moise of the Commissioners' Office.

In Closed Session the Board received briefing and guidance from legal counsel regarding the proposed project plan for 8001 Newell Street scheduled for discussion during the afternoon session of the Planning Board meeting.

The Closed Session was adjourned at 1:10 p.m.

The Board reconvened in the auditorium at 1:20 p.m.

Item 2 and Items 8 through 10 are reported on the attached agenda. Item 13 was postponed.

Vice Chair Wells-Harley left the meeting for the day at 4:05 p.m. during discussion of Item 9.

The Board recessed for dinner at 5:33 p.m. and to take up Item 14 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 5:40 p.m. in the third floor conference room, on motion of Commissioner Anderson, seconded by Commissioner Dreyfuss, with Chair Carrier, and Commissioners Anderson, Dreyfuss, and Presley present and voting in favor of the motion, and Vice Chair Wells-Harley absent. The meeting was closed under authority of Annotated Code of Maryland, State Government Article, §10-508(a)(3) to consider the acquisition of real property for a Commission purpose and matters directly related thereto, and State Government Article, §10-508(a)(7) to consult with counsel to obtain legal advice.

There was no Technical Writer or staff member present at the meeting.

In Closed Session the Board discussed the proposed relocation of the Montgomery County Park and Planning Commission Headquarters to Wheaton, and received advice from legal counsel.

The Closed Session was adjourned at 6:05 p.m.

The Board reconvened in the auditorium at 6:10 p.m. to receive testimony during the Public Hearing for the Countywide Transit Corridors (CTC) Functional Master Plan, Item 11 of the Planning Board agenda, which is reported on the attached agenda.

There being no further business, the meeting was adjourned at 9:27 p.m. The next regular meeting of the Planning Board will be held Thursday, May 23, 2013, in the Montgomery Regional Office in Silver Spring, Maryland.

M. Clara Moise
Sr. Technical Writer

Montgomery County Planning Board Meeting
Thursday, May 16, 2013
8787 Georgia Avenue
Silver Spring, MD 20910-3760
301-495-4600

1. Consent Agenda

***A. Adoption of Resolutions**

1. Crystal Rock Project Plan 920120040 - MCPB No. 13-37
2. Suburban Hospital Preliminary Plan 120120240 – MCPB No. 13-63
3. Suburban Hospital Site Plan 820120180 – MCPB No. 13-88

BOARD ACTION

Motion: **PRESLEY/DREYFUSS**

Vote:

Yea: **5-0**

Nay:

Other:

Action: **Adopted the Resolutions cited above.**

***B. Record Plats**

Subdivision Plat No. 220130800-220130810, Residences at Shady Grove Station

PD-35 zone, 39 lots and 4 parcels; located on the southeastern side of Redland Road, at the intersection of Redland Road and Yellowstone Way; Shady Grove Sector Plan.

Staff Recommendation: Approval

BOARD ACTION

Motion: **WELLS-HARLEY/PRESLEY**

Vote:

Yea: **5-0**

Nay:

Other:

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 Other Consent Items submitted for approval.

***D. Approval of Minutes**

Minutes of April 17 and April 18, 2013

BOARD ACTION

Motion: ANDERSON/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved Planning Board Meeting Minutes of April 17 and April 18, 2013, as submitted.

***3. Limited Preliminary Plan Amendment 11995030A - in Response to a Violation - Hillmead-Bradley Hills, Lot 34, Block 3 - REVISED**

R60 zone; 0.59 acres; Hillmead-Bradley Hills, Lot 34, Block 3; Request to remove 2, 473 square feet of Category I Conservation Easement and mitigate offsite at 2:1 ratio; Located on Valley Road, 200 feet west of Melwood Road; Bethesda-Chevy Chase Master Plan.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: DREYFUSS/PRESLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval, subject to conditions, and adopted the submitted Board Resolution.

Planning Department staff discussed the request to amend an existing preliminary plan in response to a forest conservation violation. The request is to remove 22,473 square feet of Category I Forest Conservation Easement and mitigate for this removal by purchasing credits equal to 4,946 square feet, approximately 0.11 acres, within an approved Commission forest conservation mitigation bank. Staff noted that the applicant acquired the property in 2010 with the existing stone patio and wall built in the conservation easement. Staff and the applicant discussed two options for bringing the property into compliance with the forest conservation law. The applicant could remove all the structures from the conservation easement or request changes be made to the conservation easement via an amendment to the preliminary plan. The applicant decided to request removal of a portion of the conservation easement and staff provided the applicant with a checklist for submitting a request for a limited amendment to the preliminary plan. The applicant does not propose to cut any trees as part of this amendment. The remaining Category I Conservation Easement would be at least 35 feet wide and would connect to the existing Category I Conservation Easement on Lot 33, and unprotected tree canopy on adjacent properties.

Mr. Patrick Perry and Mr. Josh Maisel, engineers representing the applicant, offered brief comments and concurred with the staff recommendation.

At the Board's request, Mr. Carl Weichel, the respondent also offered comments.

Ms. Karen Gray of Melwood Road, an abutting property owner, offered testimony.

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

***5. Pre-Preliminary Plan 720110080: Hobson's Choice**

Request to create one (1) 5 acre lot and 0.217 acres of dedication on an existing 5.217 acre parcel through the minor subdivision process; located on the north side of Peach Tree Road, about 2.400 feet west of the intersection with Barnesville Road; 5.217 acres; RDT Zone; Agricultural/Rural Open Space

Plan.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: **DREYFUSS/PRESLEY**

Vote:

Yea: **5-0**

Nay:

Other:

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

In keeping with the May 3 technical staff report, Planning Department staff discussed the request to create one 5-acre lot and 0.217 acres of dedication on an existing 5.217-acre property located on the north side of Peach Tree Road in the Agricultural/Rural Open Space area. Staff noted that this application includes a request for a waiver of Section 50-30(c)(1) of the Subdivision Regulations to reduce the amount of dedication on Peach Tree Road to allow the property to remain at or above five acres in size in order to meet the Zoning Ordinance requirements. Planning Department staff and Montgomery County Department of Transportation (MCDOT) staff have reviewed the applicant's waiver request, which includes the concept to provide a public improvement easement where dedication is not possible. Staff finds that the waiver is justified and granting it is not adverse to the public interest, and MCDOT staff also recommended approval of the request.

Mr. James Clifford Sr., attorney representing the applicant, introduced Mr. Walter Pritchard, the applicant, and Mr. Josh Maisel, member of the applicant's team, briefly discussed the proposed request, and concurred with the staff recommendation.

6. Long Branch Sector Plan – Review Proposed Planning Board Draft

Staff Recommendation: Approve Planning Board Draft and Transmit to the County Executive and County Council

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Discussed revisions to the Proposed Planning Board Draft of the Long Branch Sector Plan to be transmitted to the County Executive and the County Council.

In keeping with the May 7 and May 13 technical staff reports, Planning Department staff discussed proposed revisions and additions to the Long Branch Sector Plan draft report, and also discussed affordable housing, proposed zoning changes, and transportation issues in connection with the proposed Purple Line

Parks Department staff discussed parks related issues, including the proposed relocation of the public pool and recreation center next to the existing library, and the proposed purchase of the Miles Glass property.

At the Board's request, Mr. Bob Elliott of Washington Real Estate Investment Trust (WRIT) offered testimony.

There followed extensive Board discussion with questions to staff and Mr. Elliott.

The Board instructed staff to revise the Planning Board draft, incorporating the revisions discussed during the meeting, and reschedule approval of the draft report by the Board for the next Planning Board meeting.

12. Josiah Henson Special Park - ADDED

Authorization to acquire 27,465 square feet (0.63 acres), more or less, improved, from John T. Beamer, II. et al., at 6006 Tilden Lane, Rockville, Maryland 20852.

Staff Recommendation: Approval and Adoption of Resolution

BOARD ACTION

Motion: ANDERSON/WELLS-HARLEY

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation to authorize the acquisition of the proposed parkland, and adopted the submitted Resolution.

Parks Department staff briefly discussed the request seeking the Planning Board authorization to acquire 27,465 square feet, approximately 0.63 acres of land, more or less improved, from John T. Beamer, II et al. located on Tilden Lane in Rockville, Maryland, as an addition to the Josiah Henson Special Park. Staff noted that this parkland acquisition request was discussed with the Planning Board in closed session on April 11, and is now being presented for approval in open session.

7. 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 State citation and open session report in narrative minutes.

2. Roundtable Discussion

- Parks Director's Report

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action:

Parks Director's Report: Parks Department Director Mary Bradford presented a report on the recent Parks related activities. Discussion included i) the recent award of a \$5,000 grant to the Darby Store for historic preservation; ii) elevated methane levels at monitoring wells in the Bonifant Landfill, which resulted in precautionary tests of nearby homes that fortunately tested negative for elevated methane levels; and iii) efforts of the South Germantown SoccerPlex to rename one of their fields after a contributor, which required the Commission's approval.

The Planning Board supported renaming the field as long as it was not a violation of the Memorandum of Understanding between the Commission and the Maryland Soccer Foundation.

***8. [Project Plan Review No. 920130020, 8001 Newell Street \(Continuation of December 20, 2012\)](#)
- REVISED**

CBD-1 and the Ripley/South Silver Spring Overlay Zone, 0.94 acres, Mixed-use project totaling 159,900 square feet of development including up to 187 multi-family dwelling units, and 3,100 square feet of non-residential use, located at the northeast intersection of Newell Street and Eastern Avenue, Silver Spring CBD

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: DREYFUSS/ANDERSON

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 a proposal to develop a mixed-use residential and commercial structure at 8001 Newell Street, which is currently occupied by a one-story storage facility. The subject property is 0.94 acres and is located in the Silver Spring Central Business District (CBD), and is part of the Ripley/South Silver Spring Overlay Zone. On December 20, 2012, the applicant was advised that the proposal was not compliant with the setback requirements of the overlay zone and requested a deferral in order to address the setback issue. The proposed building would be 74 feet tall with 187 residential units, and an underground parking facility. The proposal includes 21.8 percent public use space onsite, which would be improved by a small park with green areas, bio-retention features, public art, landscaping, birdhouses, and a butterfly garden.

Staff noted that zoning ordinance for the Ripley/South Silver Spring Overlay Zone requires that building height in the overlay zone along Newell Street and Eastern Avenue that confronts a residential zone in the District of Columbia must not exceed a height of 45 feet unless the building is set back 60 feet from the street. The proposed building would be set back 60 feet from Eastern Avenue but not from Newell Street. After receiving clarification from County Council staff, Planning Department staff found the application to be compliant with the requirements of the Ripley/South Silver Spring Overlay Zone and consistent with the goals of the Silver Spring CBD Sector Plan.

***8. [Project Plan Review No. 920130020, 8001 Newell Street \(Continuation of December 20, 2012\)](#)
- REVISED**

CONTINUED

Ms. Anne Mead, attorney representing the applicant, offered a multi-media presentation describing the history of the proposal, and discussed changes to the application that had taken place since the December hearing. Ms. Mead did not believe previous approvals upholding the setback requirement along Newell Street qualified as binding precedent for the Board.

Mr. Dwayne Toliver, representing DC Advisory Neighborhood Commission 4A, offered testimony that his commission had discussed the proposal and voted to draft and submit a letter to the Planning Board urging that the subject property be used as a park site.

Ms. Acquetta Anderson, representing Advisory Neighborhood Commission 4A01, offered testimony that residents of her neighborhood also supported a minor master plan amendment to designate the subject property as a park site.

Ms. Dawn Brosnan, Mr. Maynard Mack, Ms. Renee Tatusko, Mr. Brian Holland, Mr. Steve Fine, and Mr. Scott Shoreman, residents of 8045 Newell Street, offered testimony expressing concern that the proposed structure would negatively impact their property values. Mr. David Brown, attorney representing the 8045 Newell Street Condo Association, offered testimony that the deferral granted at the December 20 hearing was intended to allow the applicant to comply with the requirements of the overlay zone rather than to argue that the requirements did not apply. Mr. Brown argued that inquiry into legislative intent was not justified unless the language of a statute was ambiguous, and that the language of the statute in question clearly included Newell Street.

Mr. Daniel Meijer of Gist Avenue and Ms. Jill Brantley of East West Highway offered testimony.

Mr. Brian Savoie of Eastern Avenue offered testimony in support of the proposal.

The following speakers offered testimony: Mr. Herb Simmens of Eastern Avenue, Mr. Harvey Maisel of 16th Street, Ms. Jane Reidicker representing the Greater Silver Spring Chamber of Commerce, Ms. Dolores Bondurant of 14th Street, Ms. Margery E. Goldberg of Iris Street N.W.

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

***9. [Pre-Preliminary Plan No. 720130010, Northwood Knolls](#)**

For a three-lot Resubdivision located at 503 Dennis Avenue, 500 feet north of University Boulevard, 33,345 square feet, R-60 Zone, Four Corners Master Plan

Staff Recommendation: Provide Advice

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Action: Discussed the submitted application and provided advice.

Planning Department staff discussed a proposal to re-subdivide an existing 33,345 square feet lot on Dennis Avenue into three new lots. The applicant is requesting a non-binding opinion about the merits of the proposal. The proposal would set one lot immediately adjacent to Dennis Avenue and provide access to the other two lots with a private driveway. Staff identified two sections of the

Montgomery County Subdivision Regulations with which the proposal was not compliant. Section 50-29(a)(2) allows the Board to approve subdivision of up to two lots on a private driveway if there is adequate access for emergency vehicles and other public services and is not detrimental to future subdivisions of adjacent land, but only in the event of exceptional circumstances. Section 50-29(b)(2) requires all re-subdivided lots to be of the same character as other lots within the existing block, neighborhood, or subdivision with regards to street frontage, alignment, size, shape, width, area, and suitability for residential use.

Staff did not believe there were sufficient exceptional circumstances to allow the creation of two lots with no street abutment under Section 50-29(a)(2), and advised the applicant to draft alternate proposals in which all the new lots had street frontage. The applicant is proposing three flag-shaped lots, but staff believed this would not meet the requirements under Section 50-29(b)(2) that new lots be of the same character with regards to shape, as the neighborhood in question did not have any other flag-shaped lots. Staff suggested that re-subdivision into two new rectangular lots would be acceptable.

Mr. Kevin Foster, on behalf of Mr. Charles Clements, the applicant, noted that the lot in question is large enough to be subdivided into as many as seven new lots but only has sufficient street frontage for two, which the applicant believed to constitute sufficiently unusual circumstances to qualify for a waiver of the requirements of the subdivision regulations. Mr. Foster contested staff’s assertion that a two-lot re-subdivision would meet the requirements of Section 50-29(b)(2).

The Board discussed the relative importance of frontage requirements compared to consistency of lot size and depth within a neighborhood advising the applicant that they would not find exceptional circumstances justifying a waiver of the road abutment requirements under 50-29(a)(2), but might find unusual circumstances justifying a waiver of shape requirements under 50-29(b)(2).

***10 [Forest Conservation Plan Amendment No. CBA 1389C \(In response to violation\): St. Andrews Episcopal School](#)**

Request to reconfigure and remove portions of existing category I and category II forest conservation easements; with mitigation on site and off site, located at Post Oak Road, R-90 zone, 19.08 acres, Potomac Sub-region Master Plan.

Staff recommendation: approval with conditions

BOARD ACTION

Motion: DREYFUSS/PRESLEY

Vote:

Yea: 4-0

Other: WELLS-HARLEY ABSENT

Action: Approved staff recommendation for approval, subject to revised conditions, including the establishment of a Category II conservation easement area, 20 feet from the property line, as stated in the attached Board Resolution.

Planning Department staff offered a multi-media presentation describing a proposal to modify the Forest Conservation Plan for St. Andrew’s Episcopal School, a 19.08-acre property located on Post

Oak Road in the Potomac area. Staff presented an overview of the campus layout and the conservation easement areas under the existing Forest Conservation Plan recorded by deed on April 24, 2002. The proposed amendments would realign easement areas to allow the applicant to plan future development on the campus, address existing violations in which sports fields encroach on the edges of easement areas, allow emergency access to the north corner of the school building, and re-designate some Category I easement areas as Category II in order to allow maintenance in response to complaints from neighbors that the Category I easements areas looked unkempt. There would be a net loss of 2.32 acres of easement area, which the applicant has mitigated by purchasing 6.96 acres of credit in the Piney Meetinghouse Road offsite forest conservation bank.

Mr. Stan Abrams, attorney representing the applicant, offered comments and expressed the applicant's willingness to accept all conditions proposed by staff.

Mr. William Fitzsimmons of Victory Lane handed out photographs of runoff and erosion from the subject property's sports fields and offered testimony.

Mr. Andrew Kavounis of Rosalinda Drive offered testimony.

The Board discussed a proposed alteration to the northernmost easement, referred to as Area 5 in the staff report, and suggested that a Category II easement in that location would allow fire drills, and discussed the minimum amount of clearance that would allow emergency access.

**13. Long Branch Sector Plan Worksession Continued - Tentative, Time Permitting - ~~ADDED~~
- POSTPONED**

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: This Item was postponed.

14. 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 State citation and open session report in narrative minutes.

11. Public Hearing - Countywide Transit Corridors Functional Master Plan

Staff recommendation: Receive public testimony

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received testimony.

A VERBATIM TRANSCRIPT FOR THIS ITEM IS ON FILE IN THE RECORDS MANAGEMENT OFFICE IN SILVER SPRING, MARYLAND.