



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, June 16, 2011, at 9:10 a.m. in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 9:07 p.m.

Present were Chair Françoise M. Carrier, Vice Chair Marye Wells-Harley, and Commissioners Norman Dreyfuss and Amy Presley of the four-member Board.

Items 1, 2, 16, 3, 4, 6, and 17, taken up in that order, are reported on the attached agenda.

Item 5 was postponed.

The Board recessed at 12:15 p.m. for lunch 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 12:30 p.m. in the third floor conference room, on motion of Commissioner Presley, seconded by Vice Chair Marye Wells-Harley, with Chair Carrier, Vice Chair Marye Wells-Harley, and Commissioners Dreyfuss and Presley present and voting in favor of the motion. The meeting was closed under authority of §10-508(a)(14), State Government Article, Annotated Code of Maryland, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal before the contract is awarded or bids are opened, if public discussion or disclosure would adversely impact the ability of the Commission to participate in the competitive bidding or proposal process.

Also present for all or part of the Closed Session were: Associate General Counsels David Lieb, Sean Dixon, and Derrick Rogers of the Legal Department; Director Mary Bradford, Deputy Directors Michael Riley and Gene Giddens, Michael Ma, Bill Gries, and Mitra Pedoem of the Parks Department; and Clara Moise of the Commissioners' office.

In Closed Session, the Board received briefing from Parks Department staff on the upcoming Little Falls Stream Valley Park item scheduled for discussion during the afternoon Board session, regarding a draft agreement between the Parks Department and EYA Associates granting an access road easement to EYA in Little Falls Park.

The Closed Session was adjourned at 1:00 p.m.

The Board reconvened in the auditorium at 2:05 p.m.

Items 8 through 13 are reported on the attached agenda.

The Board recessed for dinner at 6:45 p.m. and reconvened in the auditorium at 8:20 p.m.

Items 14 and 15 are reported on the attached agenda.

There being no further business, the meeting was adjourned at 9:07 p.m. The next regular meeting of the Planning Board will be held Thursday, June 23, 2011, in the Montgomery Regional Office in Silver Spring, Maryland.

M. Clara Moise
Technical Writer

Ellyn Dye
Technical Writer

Montgomery County Planning Board Meeting
Thursday, June 16, 2011
8787 Georgia Avenue
Silver Spring, MD 20910-3760
301-495-4600

1. Consent Agenda

***A. Adoption of Resolutions**

Hilltop Farm Preliminary Plan 120050740 – MCPB No. 11-48

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Adopted Resolution cited above.

***B. Record Plats**

1. Subdivision Plat No. 220110330, Tischer Estate; RC zone, 2 lots, 1 outlet; located in the northwest quadrant of the intersection of Old Columbia Pike and Dustin Road; Fairland.

Staff Recommendation: Approval

2. Subdivision Plat No. 220110790, Chevy Chase Terrace; R-60 zone, 1 lot; located in the southwest quadrant of the intersection of Wisconsin Avenue (MD 355) and Norwood Drive; Bethesda- Chevy Chase.

Staff Recommendation: Approval

BOARD ACTION

Motion: WELLS-HARLEY/DREYFUSS

Vote:

Yea: 4-0

Nay:

Other:

Action: **Approved staff recommendation for approval of the Record Plats cited above.**

***C. Other Consent Items**

Site Plan Amendment No. 82003011C for Meadows at Hurley Ridge in response to a violation, Amendment to modify site plan elements necessitated by the following: 1) site conditions discovered through enforcement actions including modifications to landscaping, street lighting, striping and pedestrian connections; and 2) revisions requested within the right-of-way by the Department of Permitting Services; R-200/TDR-4; 62.55 acres; located on Little Seneca Parkway in the Clarksburg Master Plan area.

Staff Recommendation: Approval of the Consent Agenda Item and Draft Resolution

BOARD ACTION

Motion: **PRESLEY/DREYFUSS**

Vote:

Yea: **4-0**

Nay:

Other:

Action: **Approved staff recommendation for approval of the Site Plan Amendment for Meadows at Hurley Ridge and the draft resolution, as submitted and discussed during the meeting.**

***D. Approval of Minutes**

Minutes of May 12 and May 19, 2011

BOARD ACTION

Motion: **WELLS-HARLEY/PRESLEY**

Vote:

Yea: **4-0**

Nay:

Other:

Action: Approved Planning Board Meeting Minutes of May 12 and May 19, 2011, as presented.

2. Reconsideration Request of Willerburn Acres Preliminary Plan 120110110

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: There was no motion to reconsider.

Legal Counsel to the Board presented a submitted request to reconsider the approval of the Preliminary Plan for Willerburn Acres, as set forth in the staff report.

16. Department of Parks' FY 13 - 18 CIP Strategy Session #1

Set priorities and initiatives for FY13-18 Parks' CIP

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefing from Parks Department staff, followed by discussion.

Parks Department staff offered a multimedia presentation of the proposed FY13-18 Parks Department Capital Improvements Program (CIP). Staff discussed the evaluation criteria used for the potential projects to be included in the CIP, the process, the expenditure categories, and what to expect regarding future funding capacity. Staff noted that a public forum was held in April 2011 and the testimonies received were split between the need to maintain the existing parks infrastructure and the

need for new facilities. Staff is seeking guidance from the Planning Board on the evaluation criteria, the goals, and priorities proposed for the Parks FY13-18 CIP. Staff noted that the proposed FY13-18 CIP will be transmitted to the County Executive by November 1, 2011. Staff added that a second strategy session will be scheduled with the Planning Board to discuss facility planning priorities, Vision 2030 guidance for CIP, a look at new projects, and the status of the State Program Open Space (POS), among other topics.

3. Zoning Code Rewrite – Update

Staff will provide an update on the code drafting phase of the project. Staff will brief the Board on an outline of the third discussion draft, 59-6 Administration and Procedure, as well as report on sessions with the Zoning Advisory Panel and other internal stakeholder groups.

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received update followed by brief discussion.

Planning Department staff discussed an update on the draft zoning code. Staff noted that they recently met with County Council staff to get their input, and also offered a multi-media presentation to the Zoning Committee. Staff discussed the process module, the analysis of regulatory review, and noted that the revised zoning code will make it easier to decide on projects, streamlining the process.

In reply to a Board member's question, staff noted that the review bodies are the Planning Department, the Planning Board, the Board of Appeals, the Hearings Examiner, and the County Council.

4. Provisional Adequate Public Facilities Review – Changes to Planning Board's LATR and PAMR Guidelines

Proposed change to the previously approved language for an Amendment to the LATR and PAMR Guidelines to allow the use of the Provisional APF process in the Subdivision Staging Policy for individual applications where a development district is not proposed.

Staff Recommendation: Retain the existing approved language to modify the LATR/PAMR Guidelines to permit application of Provisional Adequate Public Facilities (PAPF) to an accelerated public infrastructure through private investment.

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 3-1

Nay: PRESLEY

Other:

Action: Approved staff recommendation to retain the existing approved language to modify the LATR/PAMR Guidelines to permit application of Provisional Adequate Public Facilities (PAPF) to an accelerated public infrastructure through private investment.

In keeping with the June 9 technical staff report, Planning Department staff offered a multimedia presentation and discussed the proposed changes to the Provisional Adequate Public Facilities (PAPF). Staff noted that in February 2011 staff presented a proposal to the Board for modification to the Local Area Transportation Review/Policy Area Mobility Review (LATR/PAMR) Guidelines to permit application of PAPF approval of projects that facilitate accelerated public infrastructure through private investment. After extensive discussion, the Planning Board decided to approve the proposal with some modifications to the language that had been proposed by staff. The revised and approved changes are incorporated in the Guidelines, which had been distributed to the Board.

Mr. Steve Kaufman, attorney representing Symetry Inc., offered testimony. There followed extensive Board discussion, with questions to staff

5. 2017 Policy Area Mobility Review (PAMR) - POSTPONED

Presentation to Board and discussion of the year 2017 Policy Area Mobility Review (PAMR) analysis and results, including the FY 2012 PAMR trip mitigation requirements as required annually under the Annual Growth Policy Legislation.

Staff Recommendation: Adopt FY 2012 PAMR Mitigation Requirements Effective July 1, 2011

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: This item was postponed.

6. Brookside Gardens Visitors Center Parking and Access Modifications; Revised Forest Conservation Plan PP1995001

Project located at 1800 Glenallan Avenue, in Wheaton Regional Park.

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved staff recommendation for approval of the revised Preliminary Forest Conservation Plan, subject to conditions discussed at the meeting.

Planning Department staff offered a multimedia presentation of the request to modify the parking and access to the Visitors Center at Brookside Gardens Center, and revised forest conservation plan. Staff discussed the proposed tree-save program and the forest conservation and variance requirements. Staff noted that a request for a variance from the Forest Conservation Law to remove two trees and impact sixteen trees associated with the site has been reviewed by Environmental Planning staff and should be approved with the preliminary forest conservation plan. Staff also added that adjoining and confronting property owners and other parties of interest will be notified of the upcoming public hearing on the proposed project.

There followed a brief Board discussion with questions to staff.

17. Legal Department FY11 Spending Plan

- Request to spend FY11 Bi-County Salary Lapse

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved staff recommendation for approval of the request to spend Bi-County Salary Lapse for FY11 as discussed at the meeting.

Commission General Counsel Adrian Gardner discussed a proposed budget request regarding Bi-County Salary Lapse for FY11. Mr. Gardner noted that as a combined result of FY11 reduction-in-force, subsequent turnover, and staffing delays associated with the reorganization last fall, a salary savings of approximately \$290,000 is anticipated at the end of the fiscal year for the Office of the General Counsel (OGC). The Board approval is requested to reallocate and apply the savings to the following:

- 1) Prepay \$21,400 for FY12 rent for the legal department Annapolis office;
- 2) Prepay \$20,924 as a portion of FY12 Capital Equipment lease (ISF);
- 3) Pay \$40,000 for the Class Study for Associate General Counsel Job Series
- 4) Provide \$30,000 for EOB Building Fund

There followed a brief Board discussion with questions to staff.

7. Closed Session

Pursuant to State Government Article Annotated Code of Maryland 10-508(a)(14) to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal before the contract is awarded or bids are opened, if public discussion or disclosure would adversely impact the ability of the Commission to participate in the competitive bidding or proposal process
(Note: Agreement for the access easement granted to EYA in Little Falls Park)

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

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

8. Little Falls Stream Valley Park, Unit 1

Review and receive public comment on the draft agreement for the access road easement granted to EYA in Little Falls Stream Valley Park, Unit 1.

Staff Recommendation: Discussion

BOARD ACTION

Motion: DREYFUSS/PRESLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Received testimony and approved the draft agreement providing an access road easement to EYA, LLC in Little Falls Stream Valley Park.

Parks Department staff noted that this session is an opportunity for the Planning Board to receive public comments on the draft agreement between the Commission and EYA, LLC regarding a proposed agreement between the two parties to grant an access road easement, approximately 4,500 square feet, over Little Falls Stream Valley Park to EYA, LLC for a proposed townhouse development on the Hoyt property in Westbard.

The following speakers offered testimony: Messrs. Robert Dyer of Albia Road, Jim Humphrey representing the Montgomery County Civic Federation, Norman Knopf representing the Citizens Coordinating Committee on Friendship Heights, Bob Harris and Aakash Thakkar of Bethesda Metro Center.

9. Limited Site Plan Amendment 82008019A: Batchellors Forest

6 MPDUs and 31 market rate units with revised lot configurations and new water and sewer connections, located on Batchellors Forest Road approximately 3,000 feet south of the intersection with Doctor Bird Road, 93.64 acres, RNC Zone, Olney Master Plan

Staff Recommendation: Approval with Conditions

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

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

In keeping with the June 2 technical staff report, Planning Department staff discussed the proposed site plan amendment which recommends six Moderately Priced Dwelling Units instead of five and 31 market rate units with revised lot configurations and new water and sewer connections for a 93.64-acre property located on Batchellors Forest Road in the Olney Master Plan area. Staff noted that consistent with condition 4 of the Site Plan Resolution, the applicant is required to dedicate 17.1 acres of land, located east of Batchellors Forest Road, to the Montgomery County parks system. The applicant will convey the 17.1 acres to the parks system at the time of record plat.

Messrs. Thomas Hyde, Jr., of Batchellors Forest Road, and Troy Kimmel of Globe Theatre Drive offered testimony.

10. City of Rockville Annexation (ANX2011-00139), Reed Brothers Property, 15955 Frederick Road

Staff Recommendation: Transmit Comments to City of Rockville Mayor and Council, and Montgomery County Council

BOARD ACTION

Motion: WELLS-HARLEY/PRESLEY

Vote:

Yea: 3-1

Nay: DREYFUSS

Other:

Action: **Approved the staff recommendation to recommend denial of the proposed rezoning and residential use, as stated in the attached Letter of Transmittal.**

Planning Department staff presented the petition for annexation of the Reed Brothers Dodge property into the City of Rockville and rezoning from the County's Transit-Oriented Mixed Use (TOMX-2) Zone to the City's Mixed Use Transit District (MXTD) Zone, for development of two five-story buildings with up to 417 multifamily units and 5,000 square feet of retail uses, as detailed in the staff report. Staff recommends denial of the proposed rezoning because the Sector Plan recommends lower-density non-residential development on the site because of its proximity to the Solid Waste Transfer Station. Staff discussed the anticipated impact of noise and odors from the Transfer Station.

Ms. Pat Harris, attorney, and Mr. Mark Silverwood of the applicant company, which is the contract purchaser for the property, emphasized the need for affordable housing, the proximity to the Metro station, the distance from the Transfer Station, and the existing wooded buffer between the Transfer Station and the subject site. They maintained that noise and odors from the Transfer Station have not been an issue on the property.

Ms. Diane Schwartz Jones, representing the County Executive, elaborated on the County Executive's opposition to residential development on the property, as expressed in his letter of June 15, 2011. Ms. Schwartz Jones noted that this is the County's only solid waste transfer station and recycling facility and, as the population and associated waste and recycling quantities continue to grow, expansion of the facility will likely be needed.

Ms. Cheryl Cort, representing the Coalition for Smarter Growth; Mr. Robert Harris, attorney representing the property owner; Ms. Pam Lindstrom, representing the Shady Grove Advisory Committee; and Mr. Michael Wiencek, representing the County Housing Opportunities Commission, offered comments.

There followed considerable discussion of the need for affordable housing, the proximity of the Metro station, the impact of the Transfer Station operations on the future residences, and the potential need for future expansion of those operations.

In opposing the motion, Commissioner Dreyfuss spoke to the desirability of redevelopment with affordable housing on the site, noting that future residents would recognize the proximity of the Transfer Station and make their choice accordingly.

11. Board of Appeals No. S-2781: Gilmore-Brunett, LLC, Inc.

Applicant has submitted revised plans for a special exception for a child day care facility for up to 90 children and 20 staff; R-60 zone; located at 220 W. University Blvd.

Staff Recommendation: Denial

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved the staff recommendation to deny, as stated in the attached Letter of Transmittal.

Planning Department staff presented the request for a special exception for a child daycare facility for up to 90 children and 20 staff in a 5,469 square foot building, with surface parking, as detailed in the staff report. Staff noted that the Board recommended denial of a previous proposal for a 6,430 square foot building for 120 children and 25 staff. At that time, the Board recognized the master plan's general discouragement of special exceptions in the area, but also suggested that a child daycare facility might be appropriate if designed, scaled, and buffered appropriately to preserve the residential character of the neighborhood. Both proposals require a parking waiver and a waiver of the required 500 square feet of lot area per child. Staff recommends denial of the revised plan because of the master plan recommendations and because the size and scale of the proposed building would not preserve the residential character of the neighborhood.

Ms. Anne Meade, attorney representing the applicant, and Ms. Jane Nelson, the architect, discussed the revisions to the plan and how they believe the modified design addresses the Board's concerns with the previous proposal.

Mr. Glen Richardson, representing the South Four Corners Citizens Association, and Ms. Harriet Quinn, representing the Woodmoor-Pinecrest Citizens Association, offered comments.

There followed considerable discussion of the master plan recommendations, the nature of the surrounding residential neighborhood, and whether a daycare center could be designed appropriately for the site.

12. Roundtable Discussion

- A. Planning Director's Report / Pipeline of Approved Projects
- B. White Flint Staging - Subdivision Staging Policy Amendment Update

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Received briefings as summarized below.

A. Planning Director's Report/Pipeline of Approved Projects—Planning Director Rollin Stanley and Planning Department staff briefed the Board on the status of the Department’s effort to track the status of development projects to update the development pipeline by purging projects that have been built, withdrawn, or expired.

B. White Flint Staging - Subdivision Staging Policy Amendment Update—Planning Department staff briefed the Board on a proposal by County Council staff, following the Council’s Public Hearing on the amendments to the Subdivision Staging Policy, related to Chapter 3 of the White Flint Implementation Guidelines, which establishes the transportation approval mechanism required by the sector plan. Staff reported that Council staff proposes to include that chapter as part of the Growth Policy amendment or present it in the form of regulations that the Council would approve. Staff recommended the latter approach and the Board concurred in that recommendation.

13. Enforcement Hearing; Montgomery County Planning Department v. Peter & Gwendolyn Regis

BOARD ACTION

Motion: PRESLEY/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Concurred in the Hearing Officer's finding of violation. Agreed to allow the respondent a choice of one of the following two alternative corrective actions:

1) To file a limited preliminary plan amendment to remove the areas of encroachment (lawn and fruit trees) from the Category I Conservation Easement, with planting/mitigation required at a 2:1 ratio for the area removed, and to pay the stipulated administrative civil penalty. The plan amendment must be filed within 60 days of the mailing of the Board's Order and be presented to the Board within 120 days of mailing. The penalty must be paid within 60 days of the mailing of the Board's Order and the plantings must be accomplished between October 1 and November 15, 2011. The administrative civil fine will be waived.

2) To accept the Hearing Officer's recommended administrative civil penalty and corrective actions, excluding the professional survey, with the plantings to be accomplished between October 1 and November 15, 2011, and the penalty to be paid and the other corrective actions accomplished within 60 days of the mailing of the Board's Order, a copy of which is attached.

Legal Department staff representing the Planning Department in the enforcement case against Peter and Gwendolyn Regis of Silver Spring, the respondents, briefed the Board on the Hearing Officer's conclusions and recommendations, including a finding of violation of the Forest Conservation Law and the recommended administrative civil fine, administrative civil penalty, and corrective actions, as stated in the Hearing Officer's decision dated March 1, 2011. Staff recommends that the Board approve the Hearing Officer's recommended order. Staff requests that the Board stipulate that the penalties be paid within 60 days of the mailing of the Board's Order; that the onsite plantings be done between October 1 and November 15, 2011; and that the other corrective actions be completed within 60 days of the mailing of the Board's Order.

Mr. Peter Regis and Ms. Gwendolyn Regis, the respondents, offered comments on their own behalf and participated in the Board discussion.

There followed considerable discussion of the issues of the case, including the size and location of the Conservation Easement, the amount of encroachment, the amount of remaining forested area, the Hearing Officer's recommended penalty and corrective actions, and other options, including the possibility of retaining the Category I Easement in conjunction with the Category I Easement on the abutting property, because the forested areas are contiguous. Planning Department staff responded to questions from the Board.

14. Zoning Text Amendment 11-04

To amend the definitions of "Public facilities and amenities" and "Public use space"; amend the development standards for an optional method project to allow the provision of a building or land for a publicly owned and operated government facility to meet the public facility and amenity requirements and to satisfy the public use space requirement; and to exclude the floor area of the publicly owned and operated government facility in the calculation of gross floor area.

Staff Recommendation: Transmit Comments to County Council

(Action Required for County Council Public Hearing of 6/14/11)

BOARD ACTION

Motion: DREYFUSS/WELLS-HARLEY

Vote:

Yea: 4-0

Nay:

Other:

Action: Approved the staff recommendation to approve with modifications, including the proposed provision that improvements that are required under the Adequate Public Facilities Ordinance (APFO) to serve the property, such as road improvements, do not qualify, and excluding the proposed new section 59-C-6.2357(d), as stated in the attached Letter of Transmittal.

Planning Department staff presented the Zoning Text Amendment to allow provision of a publicly owned and operated government facility to satisfy the public use space requirement and the public facility and amenity requirement for an optional method project in a CBD Zone, as detailed in the staff report. Staff reviewed proposed modifications to the Zoning Text Amendment, including a provision that improvements that are required under the Adequate Public Facilities Ordinance (APFO) to serve the property, such as road improvements, do not qualify, and a new section 59-C-6.2357(d) related to potential loss of a government facility used to satisfy the public use space requirements, if the government should no longer want the facility.

Ms. Diane Schwartz Jones, representing the County Executive, spoke in support of the Zoning Text Amendment and commented on the modifications proposed by staff. Ms. Schwartz Jones opposed the proposed new section 59-C-6.2357(d), stating that there are controls over disposition of surplus facilities already in place.

Mr. Steve Robbins, attorney representing JBG Associates, LLC, spoke in support of the Zoning Text Amendment, noting that his client is interested in moving forward with a project that will include a new District 2 police station.

There followed considerable discussion of the proposed new section 59-C-6.2357(d), related to future loss of the public amenity.

15. Zoning Text Amendment 11-05

To delete certain automobile related uses from the list of prohibited land uses in the US29/ Cherry Hill Road Employment Area Overlay zone; and require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

Staff Recommendation: Transmit Comments to County Council
(Action Required for County Council Public Hearing of 6/14/11)

BOARD ACTION

Motion: **PRESLEY/WELLS-HARLEY**

Vote:

Yea: **4-0**

Nay:

Other:

Action: **Approved the staff recommendation to approve, as stated in the attached Letter of Transmittal.**

In keeping with the staff report, Planning Department staff presented the Zoning Text Amendment to delete certain automobile-related uses from the list of prohibited uses in the US29/Cherry Hill Road Employment Area Overlay Zone and to allow uses existing as of May 5, 2011, to satisfy the requirements of the underlying zone.

Mr. Larry Gordon, attorney, and Ms. Tamara Darvish, representing DARCARS, spoke in support of the Zoning Text Amendment.