

From: [elizabeth brody](#)
To: meredith.wellington@montgomerycountymd.gov
Cc: [MC-Development](#)
Subject: Input for development process
Date: Friday, June 16, 2023 9:24:39 AM

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Hi

I am a resident of Montgomery County, Maryland. My comment here is in general and not specific to any one project.

I have noticed that while MD/Mo Co is gathering input and even proactively asking for input in projects, the majority of citizens' views are not taken into account sometimes with Development projects and final decision-making.

One example is the recent removal of a traffic lane on Old Georgetown Road between Suburban Hospital and North Bethesda. I understand that the pretense was to increase bike traffic; however, the reality is that virtually no bikes use this street and that the horrible traffic that has resulted from their being only two lanes for cars is insane, and clearly was not well thought out when this decision was made. As it is, the roads in and around in Bethesda are already packed most of the day. While I understand that this might have been an easy, efficient, inexpensive way to satisfy a small constituency (e.g., bike riders), the solution does not make sense from any perspective. (I am. Biker, too.) I can only imagine that the people who made this decision needed some votes from bikers, or do not drive on these streets.

I expect better decision making from my elected and appointed officials in this county.

Thank you.
Elizabeth Brody
7006 Exfair Road
Sent from my iPhone

From: [David Lechner](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Cc: [Nancy King](#); marc.elrich@montgomerycountymd.gov
Subject: MoCo Development Review Process Comments.
Date: Friday, June 16, 2023 2:33:54 PM

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Comments:

The development process in Montgomery County MD is a train wreck.

The people that review and approve the projects are not responsible to voters, and way too connected to and often beholden to the developers.

But if the process allowed communities to oppose projects and actually get results, nothing would ever get built. It is hard to tell what is a majority and what is a loud minority when projects are reviewed.

And -

When preliminary steps are approved, community members are told that there are other steps later-on that provide options to make changes, and that the plans are consistent with the Master Plan (that cannot be changed).

Later-on the community is told that it is too-late, and that the development is in accordance with the initial preliminary plans.

BUT -

The fundamental problem is that the planning board staff creates "Master Plans" that are approved by the council and which do NOT reflect the will of the local communities. Right now recent plans (Montgomery Village, West Bethesda) were created and approved despite SIGNIFICANT and OVERWHELMING local opposition.

The most useful thing that can be done is to make MAster Plans subject to an actual approval VOTE by the local residents in an election in November. This would result in planning staff actually listening to residents and putting their desires into the plans. They would have to advocate for changes in density and zoning, and explain the benefits, and listen to locals.

The second thing that needs to change is that developers and land owners can seek changes in zoning despite local opposition from neighboring abutters to the property. This can result in significant drops in value for the neighbors - but the Planning Board and County council has NEVER CARED, as long as the developers were happy. THIS MUST CHANGE.

Developers should have to get the local abutter approval for CHANGES in zoning outside of the Master Plan process, and this may require compensation for the detrimental projects, but it will prevent the piracy that goes on now, where longtime homeowners are trampled over by developers updating nearby parcels, and the fat profits of that development are at the detrimental cost of the neighbors.

Lastly - Conservation Easements should not be allowed to change without significantly greater value being provided by the developer in the same project area (not some distant low-cost area). The Trees by the Lake Forest Mall are in a conservation easement - but the builder wants to tear them down to build a big-box store. That is not reasonable.

These three changes will slow down development, but will result in a process that reflects

local views for their neighborhoods and does not come at the expense of existing neighborhoods. Please consider them carefully, and do this much or more to improve the process.

Good luck !
David Lechner
Montgomery Village

From: [susan or max](#)
To: [MC-Development](#); [Meredith Wellington](#)
Subject: Development Review - Suggestions for Improvement
Date: Monday, June 19, 2023 4:58:23 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Committee Members & County & State Leaders:

Experiences with Development Review:

I have been a party in 4 land use cases which called for a great deal of research & study in order to meaningfully participate in the cases. Much knowledge is needed to effectively be a party in these instances when the developers are represented by experienced land use attorneys plus specialists in the areas of transportation, landscaping, planning, water quality, & tree cover matters. Please note that the lawyers & specialists are paid for their time & efforts while the community activists like myself are volunteers representing their communities. The 4 cases are: Layhill Overlook at Bel Pre & Homecrest Rds. - Glenmont MetroCentre at Georgia Ave. & Layhill Rd. Indian Spring C.C./Poplar Run on Layhill Rd. & Faith Community Baptist Church/School on Layhill Rd.

Additionally, I was a long-time member of the land use committee of the Montgomery County Civic Federation.

All of these cases were heard by the Planning Board, a Hearing Examiner, & on occasion also by the County Council, when zoning changes were involved. These cases spanned many years & began when Derek Berlage was Planning Board chair, then Royce Hanson, & ended when Francoise Carrier was chair. As is said, I've been around the block. During that span I noticed that certain members of the Planning Board were not fully acquainted with the cases before them or seemed to not be aware of some of the legal points involved. Please consider that only the chair of the Planning Board is full-time & 4 commissioners are part-time. The chair currently earns \$228,000./year & the other 4 earn \$30,000./year & can hold other jobs. The 4 part-time commissioners receive the same set of documents pertaining to the cases to be heard the following week, as does the full-time chair. It should be instantly clear that there is a great deal that is terribly wrong with this situation. The non-chair members are paid about 1/7th as much as the chair & all 5 get the same 1 vote.

Plus, do the part-time commissioners have sufficient time to study the cases, given that they may need to fill another job to sustain themselves economically?

The solution? The members of the Planning Board should all be full-time & be paid accordingly, with the chair receiving 10% more in pay as is now the case with the County Council. This would allow for all the board members to have sufficient time to study the upcoming cases & the higher pay offered should attract a more qualified group of applicants. I appreciate that my suggestion will cost more money but this is a case that supports the belief that you get what you pay for. Also, it is good that this effort to improve development review comes from the state, where legislative change must take place to institute the changes I have suggested.

So that there is no misunderstanding, I will mention here, that most of the part-time commissioners carried out their duties & responsibilities with great skill & knowledge. However, one vote difference, resulting in a 3 - 2 decision in a different direction, means a lot on a 5 person body.

Thank you all very much for considering my suggestions & point of view as we all work for a better outcome in the operations of development review.

Sincerely,

Max Bronstein



June 22, 2023

Hon. Lesley Lopez
Chair, Development Review Process Workgroup

Dear Chair Lopez and Committee Representatives:

MBIA and NAIOP have long been advocating for a streamlined development process in Montgomery County for years. To that end, we are supportive of the assembly of a Development Review Workgroup, and appreciative of the time spent on this project by its volunteer members. We appreciate the opportunity to offer comments to the workgroup.

We encourage the Development Review Workgroup to focus not squarely on M-NCPPC, and whether it should remain an independent commission. Rather, we encourage the workgroup to explore opportunities for efficiency between each of the applicable agencies who participate in the development review process in Montgomery County.

We support the continued independent function of M-NCPPC and believe it is misplaced guidance to suggest that moving M-NCPPC under the umbrella of the Office of the Executive Branch would generate any meaningful positive change to the Montgomery County process. Rather, moving the commission under the authority of a single branch of government would remove its ability to remain an apolitical agency that offers a largely technical, and wholly independent, analysis of planning and development issues without the weight of political pressure or party politics. The independent nature of M-NCPPC is a good thing; it is not a problem that needs to be solved.

However, agency coordination has long been a major issue in Montgomery County. Most applications subject to the development review process will run through M-NCPPC, MC-DOT, SHA, DPS, WSSC, DEP, and Montgomery Fire and Rescue, as well as other agencies depending on the circumstances. The primary issue that our members face is the added cost, delay, and uncertainty faced when those agencies fail to coordinate in a timely manner, or arrive at conflicting conclusions.

Over the past year, M-NCPPC has worked to improve its DRC process. Those efforts have proved largely successful and demonstrate that there is room for the type of incremental improvements that would actually streamline development processes in Montgomery County. Again, this is the problem that needs to be solved, rather than a wholesale change of the foundations of M-NCPPC's operating structure.

Consolidation of review processes would best be promoted by improving functions between agencies, for example, improving intake review timelines, consolidating or limiting periods for agency comment,

establishing an efficient process for resolving conflicting agency comments and directives, and clarifying overlapping roles and authority between departments.

The industry appreciates the opportunity to provide input, and looks forward to working with the development workgroup to improve the review process.

From: [Jane Lyons-Raeder](#)
To: mcg-pio@public.govdelivery.com; [MC-Development](#)
Subject: Re: Feedback Will Be Sought on Montgomery County's Development Review Process at Public Listening Sessions on June 22, July 18 and Aug. 2
Date: Thursday, June 15, 2023 4:56:07 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

June 22 is not a Friday. Is this on June 22 or June 23?

Thank you,
Jane

On Thu, Jun 15, 2023 at 4:04 PM Press Release - Montgomery County, MD <mcg-pio@public.govdelivery.com> wrote:
text of News Release



For Immediate Release: Thursday, June 15, 2023

Feedback Will Be Sought on Montgomery County's Development Review Process at Public Listening Sessions on June 22, July 18 and Aug. 2

THE HONORABLE DELEGATE LESLEY LOPEZ (D-39)

MONTGOMERY COUNTY PLANNING DEPARTMENT (M-NCPPC)

THE OFFICE OF COUNTY EXECUTIVE MARC ELRICH

Public invited to give feedback at a series of public meetings hosted by State Delegate Lesley Lopez, in coordination with the Montgomery County Planning Department and the Montgomery County Executive's Office

The public is invited to three public listening sessions on June 22, July 18, and August 2 to provide their input on Montgomery County's development review process. These public sessions are part of the newly formed [Development Review Process Workgroup](#), which was created by the Montgomery County state delegation and chaired by [Maryland State Delegate Lesley Lopez \(D-District 39\)](#).

The Montgomery County House Delegation, the Montgomery County Planning Board Chair and the Montgomery County Executive agreed in February to form a workgroup to examine the county's development review process, with a special focus on economic competitiveness. [In a letter to Delegate Lopez](#), County Executive Elrich and Chair Zyontz agreed that the current process presents opportunities for improvement.

State law established the Maryland-National Capital Park and Planning Commission (M-NCPPC). Planning Board members are appointed by the Montgomery County Council and approved by the County Executive. The Council legislates the zoning code. Under County law, any subdivision, sketch plan, and site plan must be approved by the Planning Board and must conform to adopted master plans and County codes. As a prerequisite to Planning Board review, each project must undergo an extensive review by the Montgomery

County Planning Department and its Development Review Committee comprised of planners, county agencies, and state agencies and utilities.

[View a graphic explaining the development review process.](#)

Sign Up to Provide Feedback

Community members are invited to sign up to participate in any of the three listening sessions (see schedule below). The first two meetings will be in person with a virtual option, and the last meeting will be virtual only. Live language translation or ASL requests must be made five days ahead of each event. To make a request for the July 18 or August 2 event, please contact staff in the Montgomery Planning Board Chair's Office via email at MCP-Chair@mncppc-mc.org or call 301-495-4605.

All meetings will be streamed live and available on-demand at montgomeryplanningboard.org/watch

Community members are also invited to submit written comments for the Development Review Process Workgroup to consider. Email development@montgomeryplanning.org and Meredith Wellington at meredith.wellington@montgomerycountymd.gov.

Community input will inform the Workgroup's report on its findings and recommendations that must be delivered to the Montgomery County Delegation of the Maryland General Assembly by October 15, 2023.

Development Review Process Workgroup Listening Sessions:

- Friday, June 22, 2023 – Hybrid meeting from 2 to 4 p.m. at County Council Office Building, 100 Maryland Avenue, 3rd floor Hearing Room, Rockville, MD 20850. This is a hybrid event with in-person and virtual testimony options. Sign up to provide feedback either in person or virtually via Microsoft Teams ([Sign up](#)).
- Tuesday, July 18, 2023 – Hybrid meeting from 2 to 4 p.m. at the M-NCPPC Wheaton Headquarters, 2425 Reddie Drive, 2nd floor, Wheaton, MD 20902. This is a hybrid event with in-person and virtual testimony options. [Sign up](#) to provide feedback either in person or virtually via Microsoft Teams.
- Wednesday, August 2, 2023 – Virtual-only meeting from 6 to 8 p.m. This is a virtual-only meeting. [Sign up](#) to provide feedback and a link will be sent ahead of the meeting.

Participating at the Listening Sessions Community members are invited to provide feedback at each of the public meetings on the development review process. Participants will have two minutes to speak. The workgroup members are interested in:

- Your specific experiences with the development review process.
- Suggestions on improving the development review process.
- Your experiences with the development review process in other jurisdictions.

In addition to the public listening session meetings, the Development Review Process Workgroup will meet on a regular basis between June and September as stated below and may be updated on our website at montgomeryplanning.org/development. The community is welcome to watch the meeting through a livestream (also available on demand).

The public is invited to watch online or in person to observe the discussions.

- Friday, June 9, 2023 – The hybrid meeting was held from 10 a.m. to 12 noon at M-NCPPC Wheaton Headquarters ([view the June 9 meeting](#)).
- Tuesday, June 27, 2023 – Hybrid meeting from 2 to 6 p.m. at M-NCPPC Wheaton Headquarters
- Wednesday, July 12, 2023 – Hybrid meeting from 9:30 a.m. to 1:30 p.m. at M-NCPPC Wheaton Headquarters
- Friday, July 28, 2023 – Hybrid meeting from 9:30 a.m. to 1:30 p.m. at M-NCPPC Wheaton Headquarters
- Tuesday, August 8, 2023 – Hybrid meeting from 9:30 a.m. to 1:30 p.m. at M-NCPPC Wheaton Headquarters
- Thursday, August 24, 2023 – Hybrid meeting from 9:30 a.m. to 1:30 p.m. at M-NCPPC Wheaton Headquarters

About the Development Review Process Workgroup

The Montgomery County House Delegation, then Planning Board Chair Jeff Zyontz and County Executive Marc Elrich agreed in February to form a workgroup to examine the county's development review process, with a special focus on economic competitiveness. Delegate Lesley Lopez (D- District 39) will serve as the workgroup's Chair.

The [Development Review Process Workgroup](#), made up of county residents, M-NCPPC, county, state, regional and County Council representatives, and the development community, will deliver findings to the Montgomery County Delegation of the Maryland General Assembly by October 15, 2023.

The members of the Development Review Process Workgroup were selected by the Planning Board Chair and County Executive and include:

Chair: Delegate Lesley Lopez (D-District 39) Representatives:

- Montgomery Planning: Robert Kronenberg, Christina Sorrento
- Montgomery Parks: Henry Coppola
- Montgomery County Council: Pam Dunn
- Montgomery County Executive's Office: Meredith Wellington
- Montgomery County Department of Permitting Services: Ehsan Motazed
- Montgomery County Department of Transportation: Tim Cupples
- Montgomery County Department of Environmental Protection: Steven Shofar
- Director of the Montgomery County Office of Racial Equity & Social Justice: Tiffany Ward
- MD State Highway Administration: Kwesi Woodroffe
- WSSC: Karem Carpio
- Pepco: Danielle Freedman
- Washington Gas: David Shults
- Development Community: Katherine Kubit, Gary Unterberg
- Broader Community: Amanda Farber, Charisse Scott
- Senator Ben Kramer's office: Diane S. Jones

In the Letter of Intent from February 2023, it was agreed that the Development Review Process Workgroup would work together in support of the following principles:

- Montgomery County residents and applicants for development approvals deserve the best and most efficient process, while neither minimizing public participation, racial equity and social justice, nor compromising on safety, transportation access, or environmental standards in approved plans.
- Montgomery County has the assets to be the best county in the region for economic development and improving the development review process will help ensure a better economic development environment for all.
- All parties are striving to create the best Montgomery County that we can and recognize that every person's past experience tells a story that needs to be respected.

Read the [February 6 Letter of Intent](#) for the workgroup.

About the development review process The [Montgomery County Planning Board](#) is responsible for planning and subdivision functions in Montgomery County pursuant to the Maryland Land Use Article. This includes the administration of subdivision regulations, approval of sketch, preliminary and site plans, preparation and adoption of recommendations regarding zoning map amendments and conditional uses, the preparation of master plans, and mandatory referrals.

The Montgomery County Planning Board serves as the [Montgomery County Council's](#) principal adviser on land use and community planning. The Council adopts zoning and subdivision laws, as well as master plans, which are then implemented by the Planning Department and Planning Board. The Montgomery County Planning Department drafts master plans, and performs surveys, studies and other planning duties under a work program approved by the Montgomery County Council. The Planning Department also reviews proposed development projects that go to the Planning Board for approval.

Montgomery County's [development review process](#) is largely delegated to Montgomery Planning by the Planning Board. This process ensures that new development applications are consistent with adopted master plans and State and County laws as well as considering the impact on the environment, quality of design, compatibility with neighboring uses and the availability of public facilities (water and sewer, transportation,

schools). The development review process and Planning Board approval is a necessary and legally required step that takes place prior to approved projects applying for permits to construct.

The Development Review Committee (DRC) organized by Montgomery Planning is one step in the development review process, and includes representatives from the Planning Department, Parks Department; county agencies dealing with transportation (Montgomery County Department of Transportation), stormwater, rights-of way, fire safety, and well and septic (Montgomery County Department of Permitting Services), water and sewer (Department of Environmental Protection), and housing (Montgomery County Department of Housing and Community Affairs); the State Highway Administration; and utilities (PEPCO, Washington Gas, WSSC, Verizon). Montgomery Planning reviews plans and is also the authority per county law for forest conservation compliance and enforcement. The DRC structure allows applicants to work with agency staff on clarifying and resolving specific technical queries regarding development applications at the beginning of the review process. DRC biweekly meetings are live-streamed and open to the public.

This regulatory process of reviewing developments is governed by both State and County law. Reviewing development proposals before those projects seek permits for construction ensures that every proposal aligns with community needs, legal requirements, the vision for the neighborhood's future, and Montgomery County's priorities, some expressed through Capital budget funding. There are multiple opportunities in the development review process for public participation, through pre-application meetings, public DRC meetings and opportunities to submit comments to agencies and testimony for the public Planning Board hearings.

After the Planning Board approves an application, the Montgomery County Departments of Permitting Services (DPS) and Montgomery County Department of Transportation review and issue required building and access permits, final stormwater management requirements, and other approvals related to sediment and erosion control. For projects that involve state roads, the MD State Highway Administration (SHA) reviews and issues necessary access permits. During building and site construction, DPS staff also monitors for compliance and conducts final reviews and inspections when construction is complete.

Learn more about the [development review](#) process in Montgomery County.

###



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This email was sent to janeplyons@gmail.com using GovDelivery Communications Cloud on behalf of: Montgomery County Maryland · Monroe Street · 13th Floor Rockville · Rockville, MD 20850



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Jane Lyons-Raeder
(410) 474-0741
janeplyons@gmail.com

From: [Naomi Miller](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Subject: Development Review Process: feedback for listening sessions
Date: Sunday, July 2, 2023 2:19:36 PM

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TO: development@montgomeryplanning.org

Meredith Wellington — meredith.wellington@montgomerycountymd.gov

FROM: Naomi Miller, Chair, Wyngate Citizen's Association Land Use Subcommittee

(Bethesda, MD 20817) – naomimil@verizon.net

RE: Montgomery County Call for Comments: Montgomery County's Development Review Process at Public Listening Sessions on June 22, July 18 and Aug. 2 <https://lnks.gd/2/2-d6zD->

Please find below findings and recommendations prepared by the Wyngate Citizens Association (WCA; Bethesda, MD) Land Use Subcommittee members in response to the Montgomery County, Maryland call for comments (June 21, 2023) for listening sessions on the topic of the County's *Development Review Process* to take place on June 22nd, July 18th, and Aug. 2nd.

Our WCA Land Use Subcommittee members are alarmed at the rapid and increasing loss of tree canopy and green space in our neighborhood of ~1200 homes as a result of development in our community that consists almost exclusively of tear downs of original midcentury brick homes versus preservation. We strongly urge you to consider our remarks and take action to reverse this trend and its deleterious effects.

We request that these WCA comments be included in the listening session record.

Background

The *Montgomery County Tree Canopy Law Annual Report* for 2022 states:

“The Tree Canopy Law applies to development activity subject to a sediment control permit from Montgomery County, Maryland. In general, activities regulated by the Tree Canopy Law are required to provide mitigation in the form of planting shade trees on the site where the disturbance occurs. Applicants may choose not to plant the required shade trees for any reason and instead pay fees into the Tree Canopy Conservation Account. The fee is \$250 per tree, equal to rate for bonding trees in the right-of-way.” (1)

We believe that the law as written is harming our neighborhood due to the waiver payment allowance for builders who tear down the original midcentury properties and make no effort to preserve green space and/or mature tree canopy and landscaping.

According to the *2017 Montgomery County Tree Canopy Annual Report*, our zip code (20817 in Bethesda) had the highest percentage of tree canopy loss in the county. The 2022 Montgomery County Tree Canopy Law Report does not show cause for optimism. In FY 2022, of a total of 3,155 total trees required as mitigation, only 482 (15%) were planted to replace extant mature trees. Waiver mitigation fees were paid by builders for the remainder of the trees lost. The 20817 zip code had the highest percentage of fees paid between FY2014 to FY2022, but nowhere near the corresponding number of trees planted.

The Tree Montgomery program (2), while laudable, is also not the answer to the problem of builders clearing lots and removing trees. The free tree program (for residents who request trees) does not take into account the County housing zoning that virtually precludes adequate green space that can accommodate preserving mature trees and plantings.

The recent changes to the County’s Forest Conservation Law apply only to lots over 40,000 square feet. Lots in our neighborhood average between 6000 and 12,000 square feet, the sizes that have suffered a great amount of canopy loss; i.e., 37% of fees paid were for those smaller sized lots, according to the 2022 Tree Canopy annual report.

If the County does not act to regulate and restore the vanishing tree canopy in alignment with the County’s purported environmental goals, the 20817 zip code will lose most of its remaining tree cover due to climate -and environmentally-neglectful development.

Requiring developers to plant native trees in our zip code and accept responsibility for preserving a larger component of green spaces and tree canopy is imperative to improve air quality, protect our properties and streets from flooding, and provide needed shade to people and homes that will make our neighborhood more livable, e.g., as it had been prior to outsized building considering the size of the average original Wyngate properties.

Recommendations

We urge changing the law as it currently stands to:

1. Eliminate the \$250 waiver fee for removal of trees by developers. In our neighborhood where redeveloped houses sell for over \$2.5 million, the \$250 penalty does not discourage developers from clear cutting lots. (We have pictures documenting the tree destruction throughout the neighborhood.) Furthermore, the 2022 Tree Report Card on the state of the region's trees notes that *"Illegal removals of protected Special and Heritage trees on development sites have increased because the fines are set too low to act as a deterrent."* (3)
2. Instead, the County should require builders to demonstrate every possible effort to salvage mature trees and landscaping. Some trees in a nearby comparable neighborhood have been valued by arborists between \$45,000 and \$65,000 each. Further, elimination of trees mature trees and landscaping has led to flooding for owners of original houses, requiring expensive French drains and other mitigation at the expense of the original home owners.
3. In addition, the County should require that trees be replanted on the property being developed. Many lots in our neighborhood have been cleared for new houses, and many have no replacement trees at all. This is a housing building zoning problem that compounds the negative effects on our neighborhoods and environment, and ultimately the well-being of Montgomery County's citizens.

We would be pleased to follow up with additional details at a later time with the County Housing Director and any other County personnel interested in learning more about best practices evolving in the US and around the globe in housing preservation and green space creation.

The WCA Land Use Subcommittee appreciates this listening session opportunity, and with more time, would welcome additional dialogue on this critical and timely development review process concern.

(1) <https://www.montgomerycountymd.gov/green/Resources/Files/trees/tree-canopy-law-annual-report.pdf> Accessed 6/30/2023

(2) <https://treemontgomery.org/request-a-tree/> Accessed 6/30/2023.

(3) The 15th Annual Tree Report Card; The State of DC's Trees, 2022.
<https://caseytrees.org/treereportcard2022/> Accessed 6/22/23.

From: digitalteam@montgomeryplanning.org
To: [MC-Development](#)
Subject: New submission from Development Review Process Feedback
Date: Saturday, July 8, 2023 7:53:58 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Name
Steve Warner
Email
Sdwarner65@gmail.com
ZIP Code
20910
Comment
I believe potentially historical structures including mid county examples are too often threatened by economic pressures like banks, housing, health care, fast food and others adding to the clutter of traffic

From: digitalteam@montgomeryplanning.org
To: [MC-Development](#)
Subject: New submission from Development Review Process Feedback
Date: Tuesday, July 11, 2023 2:59:46 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Name

William Reed

Email

war921@hotmail.com

ZIP Code

20851-1748

Comment

Don't you think we are overdeveloped? I live in Rockville where they blocked Big Box Stores from establishing on Rockville Pike years ago. They said that they would create grid lock traffic on the pike. Now, instead, they have allowed the development of hundreds of Condo high rises. That development has created more grid lock than a Costco or a Walmart ever would. Our hometown feel is being destroyed!



July 12, 2023

By E-Mail

Delegate Lesley J. Lopez
and Members of the Development Review Process Workgroup

Re: Development Review Process Workgroup

Dear Delegate Lopez and Members of the Development Review Process Workgroup,

The attorneys of Miles & Stockbridge P.C.'s land use/zoning practice group in Rockville (the "Miles Group") wish to provide feedback to the Development Review Process Workgroup (the "Workgroup"). The Miles Group supports the objectives of the Workgroup as expressed in the February 6, 2023 letter to Delegate Lesley Lopez, Chair of the Metro Washington Committee from County Executive Marc Elrich and then-Planning Board Chair Jeff Zyontz (the "Letter of Intent"). These include, among other things, ensuring an efficient development review process and supporting a successful economic development environment in Montgomery County (the "County").

The Miles Group enjoys a cooperative, collaborative, and productive relationship with the professional staff involved with development review in the County, such as the Planning Department, the Parks Department, several County executive branch agencies (including the Department of Permitting Services, the Department of Transportation, the Department of Housing and Community Affairs, and the Department of Environmental Protection), state agencies (including the Maryland Department of Transportation - State Highway Administration), and utility companies (including WSSC, Pepco, and Washington Gas). The Miles Group believes these individuals are consistently hardworking, solution oriented, and dedicated to public service. Notwithstanding this rapport, and as noted in the Letter of Intent, there are always opportunities to improve the County's development review process.

It is with this understanding that the Miles Group provides the following comments and proposals. As explained in greater detail below, we encourage the Workgroup to explore streamlining amendments to previously approved plans, expanding the scope of new plans that can be approved at the staff level, and seeking

opportunities to run certain development review processes concurrently. We also present a list of additional topics for the Workgroup's consideration that also impact development review in the County.

Plan Amendments

Both Chapters 50 and 59 of the County Code (the "Subdivision Regulations" and the "Zoning Ordinance," respectively) permit amendments to previously approved development plans. Under the County's Subdivision Regulations and Zoning Ordinance, amendments are classified as either "major" or "minor." A major amendment to a site plan includes, among other things, any request to increase density or height, change a use, decrease open space, or change a condition of approval, § 7.3.4.J.1 of the Zoning Ordinance, while a major amendment to a preliminary plan includes any request to change density that results in a greater adequate public facilities ("APF") impact, makes major changes to lot configuration or location, or right-of-way width or alignment, or changes any condition of approval (except to change a plan validity period or APF validity period). § 4.2.F.2.a of the Subdivision Regulations.¹ Major amendments are assessed the same fees as initial applications, which are usually much higher than those for minor amendments. Applicants for major amendments must also follow the same hearing procedures for initial applications, which generally requires preparing and filing detailed application materials, and appearing before the Planning Board for a public hearing. See § 7.3.4.J.1.c of the Zoning Ordinance; 4.2.F.1 of the Subdivision Regulations. This requires considerable time and expense, all of which hinder an applicant's ability to make desirable modifications to previously approved plans and respond to rapidly changing market conditions.

Other jurisdictions, including Prince George's County, the City of Rockville, and the City of Gaithersburg, allow amendments that increase density or height, change a use, and/or modify open space for approval at the staff level. See, e.g., § 24-

¹ For reference, a minor amendment under the Zoning Ordinance "includes any change to a parking or loading area, landscaping, sidewalk, recreational facility or area, configuration of open space, or any other plan element that will have a minimal effect on the overall design, layout, quality or intent of the plan. A minor amendment also includes a reduction in approved parking[.] A minor amendment does not include any change that increases density or height or prevents circulation on any street or path." § 7.3.4.J.2.a of the Zoning Ordinance.

A minor amendment under the Subdivision Regulations "includes any change that does not change density in a manner that results in greater adequate public facilities impact; make major changes to lot configuration or location, or right-of-way width or alignment; or alter the intent, objectives, or requirements of the Board in approving the preliminary plan. A change to plan validity period or APF validity period is a minor amendment." § 4.2.F.2.b of the Subdivision Regulations.

3402(e)(1)(B) of the Prince George's County Code; §§ 25.05.07.b & c of the Rockville City Code; §§ 24-172A(b) & 24-198(c) of the Gaithersburg City Code. The Prince George's County Planning Board also has expressed allowable density for subdivision approvals as a peak-hour AM and PM vehicle trip cap. This practice permits greater flexibility for how a property may be used as long as there is no effect on APF adequacy findings. In the County, however, a change of use is considered a major amendment by definition. § 7.3.4.J.1.a of the Zoning Ordinance.

Even minor amendments in the County can still require a public hearing before the Planning Board if an objection is received within a certain period of time after application notice and the objection is considered "relevant." § 7.3.4.J.2.c of the Zoning Ordinance. This puts the County at a competitive disadvantage as minor amendments approved by staff are generally faster, less expensive, and more predictable. Thus, we recommend the Workgroup consider expanding what may be classified as minor amendments for staff approval, including modifications to previously approved plans that increase density and building height, or change a use.

Administrative Subdivision Plans

The County's Subdivision Regulations allow for an administrative subdivision plan to create lots for: a) existing places of worship and institutional uses; b) detached houses in the Agricultural Reserve (up to five lots); c) detached houses in any residential zone (up to three lots); d) consolidation of an existing lot with another lot or part of a lot in a nonresidential zone; e) Signature Business Headquarters projects; and f) Biohealth Priority Campus projects. § 6.1 of the Subdivision Regulations. Administrative subdivision plans may be approved by the Planning Director if no objection to the application is received within 30 days after application notice is mailed. § 6.3(B)(1) of the Subdivision Regulations. If an objection is received, and the Director considers it to be "relevant," then action by the Planning Board at a public hearing is required. § 6.3.B.2 of the Subdivision Regulations. Even when no objection is received, the Planning Director still retains authority to require Planning Board action. *Id.* Approved administrative subdivision plans also require the approval of a record plat by the Planning Board. *See* § 6.3.F.2.b of the Subdivision Regulations.

The Workgroup should consider further strategic expansion of the administrative subdivision plan process to improve efficiency. For example, Subtitle 24 of the Prince George's County Code (the "Prince George's Subdivision Regulations") authorizes a "minor subdivision" process for, among other things, a subdivision that results in up to 10 dwelling units. *Id.* at § 24-3402(b)(2). Unlike the County's administrative subdivision plan process, and as noted below, the Prince

George's Subdivision Regulations also allow the Planning Director to approve plats for minor subdivisions. *Id.* at 24-3402(c)(1)(B). This facilitates additional development applications to proceed in a more expedited manner.

Additionally, it would be appropriate for the Workgroup to consider clarifying the Planning Director's discretion for when administrative subdivision plans in the County must be brought for Planning Board approval. Specifically, a higher standard than a "relevant" objection may be appropriate to bring an administrative subdivision plan to the Planning Board.

The Workgroup should also examine whether the Planning Director should retain the discretion to require Planning Board action on administrative subdivision plans even in situations where no objections are received. If any objection, as a matter of course, can shift an administrative subdivision plan application from the Planning Director to the Planning Board, the benefits of the process are lost.

Furthermore, the Workgroup should discuss approaches to achieve the 90-day schedule between subdivision plan acceptance and Planning Director action currently codified in the Subdivision Regulations with greater frequency. See § 6.3.B.4 of the Subdivision Regulations. It is our observation that even when an applicant retains an experienced consultant team, obtaining administrative subdivision plan approval within 90 days is a considerable challenge. In situations where the review of an administrative subdivision plan application takes as long as (or even longer than) a standard preliminary plan application, the distinction between the two plan types is blurred.

Minor Subdivisions

The Subdivision Regulations include a minor subdivision procedure that does not require the submission of a full preliminary plan application for: a) minor lot adjustments; b) conversions of an outlot into a lot; c) consolidations of adjoining properties in certain residential zones not developed under cluster provisions; d) subdivisions to reflect ownership for a recorded lot approved for a commercial, industrial, or multi-family residential use; e) ownership plats to delineate separate ownership units within a lot approved for any use except for single-unit living; f) plats of correction; g) pre-1958 unplatted parcels created by deed if the parcel is developable for only one detached house; h) creation of a lot from a part of a lot in a residential detached zone that was created as a result of a deed transfer of land; and i) unplatted parcels with existing houses in certain residential zones. § 7.1 of the Subdivision Regulations. A subdivider that satisfies the requirements for a minor

subdivision is also required to file a record plat application for approval by the Planning Board. § 7.2 of the Subdivision Regulations.

As with administrative subdivision plans, the Workgroup should analyze expanding the circumstances under which a minor subdivision may be allowed. This could include, among other things, creating a lot from a part of an outlot (rather than just from a part of a lot), and permitting the creation of a lot where more than one of the minor subdivision applicability provisions are met. Additionally, the Workgroup should consider establishing a codified scheduling target for minor subdivisions. As noted above, the Subdivision Regulations include a 90-day “regulatory clock” for administrative subdivision plans. Neither the Subdivision Regulations nor County Code regulations (“COMCOR”), however, provide a similar provision for minor subdivision plans. Setting such a schedule for minor subdivision plans could confirm an intent for more efficient development review and offer greater predictability to applicants.

We also recommend the Workgroup consider the County’s approach to ownership plats, which designate land as distinct units within a single record lot for purposes of separate ownership without subdividing the underlying lot. Although ownership plats are authorized under the Subdivision Regulations as a minor subdivision, it has been our experience the review process is especially onerous with only a few successful applicants obtaining approval. This resistance ultimately discourages applicants from pursuing ownership plats. Other jurisdictions, such as the City of Rockville, routinely approve ownership plats without such challenges. See § 25.21.13 of the City of Rockville Code.

Similar to administrative subdivision plans, the Workgroup should also consider authorizing the Planning Director to approve plats implementing a minor subdivision rather than requiring a public hearing before the Planning Board.

Record Plats

Record plats are generally the last development application filed with the Planning Department prior to building permit issuance. Unless otherwise exempted under the Subdivision Regulations, any subdivision of land must be included on a plat approved by the Planning Board and recorded among the County land records before a building permit may be issued. § 3.2 of the Subdivision Regulations. Record plats must be reviewed by relevant agencies, approved by the Planning Board at a public hearing, and signed by both the Planning Board and the Department of Permitting Services (“DPS”) before they can be recorded. § 8.2 of the Subdivision Regulations.

We recommend modifications to the existing record plat application and approval processes be considered by the Workgroup. For example, current agency practice provides record plat applications will not be accepted for review by the Planning Department until the underlying preliminary plan is certified. See COMCOR 50.10.01.09.C.1. The Workgroup should consider allowing applicants to submit record plat applications for acceptance and review while the preliminary plan is being reviewed for certification. This will allow these two related processes to proceed concurrently. In the event a change is made to the certified preliminary plan that needs to be reflected in the pending record plat, it can be incorporated during the plat review process prior to approval.

Additionally, the Maryland Code states a record plat cannot be recorded among the County land records unless it has been approved by the Planning Board and signed by the Planning Board Chair and the Secretary-Treasurer of the Maryland-National Capital Park and Planning Commission. Maryland Code (2012, 2022 Supp.), § 23-102(a)(1) of the Land Use (“LU”) Article. The Maryland Code and the Prince George’s Subdivision Regulations, however, authorize the Prince George’s Planning Director to sign a “final plat of minor subdivision” under certain circumstances. LU § 23-102(b); § 24-3402(c)(1)(B) of the Prince George’s Subdivision Regulations. This difference also puts the County at a competitive disadvantage. Thus, the Workgroup should discuss allowing the Planning Director to approve a record plat in specific situations, including for administrative subdivision plans and minor subdivisions.

Furthermore, it is current administrative practice to require signatures from both the Planning Board and DPS on record plats prior to recordation. The Workgroup should evaluate whether obtaining DPS’ signature is necessary when the Planning Board (and hopefully in the future, the Planning Director) is the approving authority for record plat applications.

Another possible method to streamline review would be to use conditional approval for plats. This would allow record plat applications to be brought before the Planning Board (and hopefully in the future, the Planning Director) sooner. Once the conditions are satisfied, the record plat could then be signed. A conditional approval procedure appears to be currently available under the Subdivision Regulations. § 8.2.I of the Subdivision Regulations.

Additional Topics

The following is a summary list of additional items the Workgroup may also consider in order to enhance development review in the County:

- Maintaining use of remote appearances for pre-submission community meetings, Development Review Committee meetings, meetings between applicant teams and professional staff, and public hearings;
- Updating the Planning Department's noise guidelines (currently from 1983);
- Encouraging the Planning Department and Planning Board to use their authority as appropriate to exclude adopting some recommendations from Executive branch agencies when incorporating their letters as conditions of approval. This would help avoid situations where Executive branch agency recommendations conflict with other conditions of approval, do not have a reasonable nexus with the development plan under review, or impose a disproportionate burden on the applicant.
- Examining standard conditions of approval for vagueness and relevance (e.g., "Before recording a plat, the Applicant must satisfy MCDOT's requirements for access and improvements," "The record plat must show all necessary easements.") as such language can create confusion and uncertainty;
- Confirm an applicant's ability to elevate disagreements with Planning Department staff to regulatory supervisors, area chiefs, and the Planning Director's office when good-faith efforts to resolve are unsuccessful;
- Considering making sketch plans optional and/or removing the 36-month validity period;
- Streamlining identification of required frontage improvements when information is currently spread across several (and at times contradictory) authorities (e.g., master/sector plans, design guidelines, functional master plans like the Bicycle Master Plan, Complete Streets Design Guide);
- Preparing guidance, with participation from utility companies, regarding when the undergrounding of existing utilities should be required. This issue has a substantial impact on the economic viability of projects, including developments with a substantial amount of affordable housing;
- Increasing transparency of the Planning Department's internal processes/timelines for preparing staff reports;
- Allowing applicants an opportunity to review Planning Board resolutions prior to adoption, in order to reduce the need (and time involved) for issuing corrected resolutions;
- Improving tracking of preliminary plan validity and adequate public facility validity period expiration dates, especially as it relates to the application of automatic extensions granted by the County Council;

Delegate Lopez
and Members of the Development Review
Process Workgroup
July 12, 2023
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- Creating a “one stop shop” for public information relevant to development review that is currently spread across a number of websites (e.g., online Zoning Map, DAIC, MCAAtlas, DPS Data Search, development plan and permit applications);
- Examining the process for Traffic Mitigation Agreements/Traffic Demand Management Plans (e.g., whether M-NCPPC needs to be a signatory on Traffic Mitigation Agreements and amendments thereto; strategies to improve the processing time for Traffic Demand Management Plans with MCDOT);
- Making ePlans more user-friendly (or using more intuitive software); and
- Educating, encouraging, and expanding the use of DPS’ new peer review program (for example, to other types of permits, NRI/FSDs, and forest conservation plans).

We greatly appreciate the Workgroup’s dedication and creativity to improve the County’s development review process. Thank you for your consideration of our comments as we work towards our shared goal of making the County the best place to live, work, and play.

Sincerely,

MILES & STOCKBRIDGE P.C.

A handwritten signature in blue ink that reads "Casey L. Cirner" followed by a stylized "KDM" monogram.

Casey L. Cirner

A handwritten signature in blue ink that reads "Erin E. Girard" followed by a stylized "KDM" monogram.

Erin E. Girard

A handwritten signature in blue ink that reads "Phillip A. Hummel" followed by a stylized "KDM" monogram.

Phillip A. Hummel

A handwritten signature in blue ink that reads "Scott C. Wallace" followed by a stylized "KDM" monogram.

Scott C. Wallace

From: [Cynthia Widmer](#)
To: [MC-Development](#)
Subject: Camp Rippling Brook
Date: Friday, July 14, 2023 9:31:56 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

To whom it may concern,

My husband and I live less than a quarter of a mile north of the proposed Camp Rippling Brook at 20021 New Hampshire Ave, Brinklow, MD 20862. We find this development completely incongruous with the setting of this rural community and we are trying to make our voices heard. We ask that you consider the following:

- in low-density neighborhoods, the circular radius of concern/notification needs to be expanded to one mile.
- civic associations within 5 miles of the proposed development site should be notified.
- all affected parties need to be notified when a development proposal is received at the Planning Board intake checkpoint, and not after the proposal has been accepted. (This is the limbo we are currently in). If communities are not notified until the sign goes up stating a proposal is in the works, there is very little time to do research and develop an appropriate response to the proposal.
- create a county ombudsman to assist communities through the hearings process. Currently, communities need to hire legal counsel to navigate the hearings process. This may place an undue burden on communities which want to ensure that the zoning rules in their neighborhood are honored by the county.

Thank you for your time and consideration to this matter.

Sincerely,

Cyndie & Chris Widmer



CLIMATE COALITION
Montgomery County, MD

TO: Planning Board Development Review Workgroup

FROM: Karen Metchis on behalf of the Climate Coalition Montgomery County (formerly the CAP Coalition)

RE: Development Review

DATE: July 18, 2023

My name is Karen Metchis, and I am speaking on behalf of the Climate Coalition Montgomery County (formerly the Climate Action Plan CAP Coalition). We are a coalition of 20 grass-roots community organizations and many individuals. Montgomery County's Climate Action Plan (or CAP) was adopted more than 2 years ago following years of advocacy, and our Coalition's goal is to ensure robust and equitable implementation of the CAP to address the dire impacts of climate change that we are experiencing, worldwide.

The CAP contains many needed climate adaptation actions which are related to the development review process. Park and Planning, Department of Permitting, other County agencies, and others such as WSSC are identified in the Plan as having either the lead or contributing responsibilities for various actions. And that is many of you all!

For those not familiar with the CAP here are a few examples of actions related to the development process. The CAP calls for Montgomery County to:

- update its building code to require green roofs, solar, or cool roofs and pavement codes (A-6),
- update green public space and streetscape design standards (A-7),
- adopt codes related to Green Infrastructure on public and private properties (A-10),
- adopt specific climate adapted development standards (A-11), and
- ban stormwater management waivers (A-13).

There are many more actions and much more detail in the Plan and if you haven't read it already, I urge you to do so. Here is the link to the CAP:

<https://www.montgomerycountymd.gov/climate/Resources/Files/climate/climate-action-plan.pdf>

A year ago, the Climate Coalition was also instrumental in getting a bill passed that requires the Planning Board to evaluate all master plans and ZTAs for their potential impacts on greenhouse gas emissions and on community resilience, with a goal to find development pathways that decrease emissions while building resilience. Given that master plans are vision documents, it is incumbent upon you to ensure that development actually comports with the spirit and intent of this legislation. Please see:

<https://montgomeryplanning.org/planning/climate-assessment-of-zoning-text-amendments-and-master-plans/>

So, our question is this: Is the County – including the Planning Board - really giving enough holistic "climate consideration" to development projects during the approval process? In our view, the answer is

NO – not until Park and Planning, Permitting, DEP, and other agencies move quickly on many of the actions identified in the CAP related to development review. There is no time to waste on these actions.

Let me give you an example:

There is a new 300 ft tall glass building in Bethesda – just around the corner from where I live and which I walk by many times a week – which is LEED certified; it has several admirable features such as a green roof covering 35% of the roof. But the walls of glass also reflect sunlight and significant heat back onto the sidewalk and the surrounding area. It is great for people inside the building but not so great for people outside. It essentially contributes to a micro-climate in the heart of Bethesda – let's just call it what it is - an urban heat island.

It is great that there is an emphasis on transit-oriented development. And that the County is gradually building wonderful bike lanes and pedestrian paths in the area. Unfortunately, the design of the buildings (and the continued loss of green space) in the ever more dense urban area is failing to consider *resilience* to extreme heat and flooding events for the people who live, work, and commute here.

I might add one more element that gets cursory treatment in the CAP – noting the existence of the Zero Waste Task Force. I also urge you to think if there are ways to reduce the amount of waste during the development and redevelopment process, including deconstruction, reuse, and recycling where possible.

It is essential that we rely not only on the letter of the law; it is essential that we all take seriously the intent. We are all at risk of extreme heat, flooding, pests, and disease. Our supply chains are at risk – including disruption of where our food and water comes from. We must all take personal responsibility in all our decisions and actions to be proactive, and not wait for what is 'required' in order to slip through the cracks that undermine our collective health and safety.

We are not experts in real estate development. But we are experts in what is going on in the climate and what is happening to the people. Please think this through carefully and incorporate the letter and spirit of the Climate Action Plan in the Development Review Process.

Respectfully,

Karen Metchis

On behalf of the Climate Coalition Montgomery County

- 350 Montgomery County
- ACQ Climate (Ask the Climate Question)
- Bethesda Green
- Biodiversity for a Livable Climate
- Chesapeake Climate Action Network
- Elders Climate Action
- Environmental Justice Ministry Cedar Lane Unitarian Universalist Church
- Environmental Study Group

- Friends of Sligo Creek
- Glen Echo Heights Mobilization
- Green Sanctuary Committee of the Unitarian-Universalist Church of Silver Spring
- Montgomery County Faith Alliance for Climate Solutions
- One Montgomery Green
- Poolesville Green
- Safe Healthy Playing Fields
- Sugarloaf Citizens' Association
- Transit Alternatives to Mid-County Highway Extended/M-83 (TAME)
- The Climate Mobilization Montgomery County
- Takoma Park Mobilization Environment Committee (TPMEC)
- Zero Waste Montgomery County

Table 15: CAP climate adaptation actions

Action	Climate Risk Reduction	Racial Equity & Social Justice	Public Health	Environmental Stewardship	Economic Prosperity	Authority	County Investment	Private Investment	Lead	Contributors
A-1: Water Infrastructure Resilience	Extreme Precipitation	+	++	+	Neutral	Outside County	\$	\$	WSSC Water	DEP, municipalities, DC Water
A-2: Repair and Enhancement of Stormwater Conveyance Systems	Extreme Precipitation	+	+	+	Neutral	County	\$\$\$	\$	MCDOT	DPS, M-NCPPC
A-3: Temperature Monitoring and Alerts	Extreme Heat	++	+	Neutral	Neutral	County with Change	\$	\$	OEMHS	HHS
A-4: Extreme Weather Energy Efficiency Building Code	Extreme Heat	+	+	Neutral	Neutral	County with Change	\$\$\$	\$	DPS	DHCA, MCGB
A-5: Climate-Adapted Housing Incentives/Subsidies	Extreme Heat	+	++	Neutral	+	County with Change	\$\$\$	\$	DHCA, DEP	MCGB, DPS
A-6: Green/Cool/PV Roof and Pavement Code	Extreme Heat	-	++	+	++	County with Change	\$	\$\$\$	DPS	DHCA, MCGB
A-7: Green Public Spaces	Extreme Precipitation	Neutral	+	++	Neutral	County with Change	\$\$\$	\$	DEP, MCDOT	DPS, M-NCPPC
A-8: Harden Emergency Shelters and Install Resilience Hubs	Extreme Heat	++	++	Neutral	Neutral	Outside County	\$\$\$	\$	HHS	DGS, OEMHS, MCPS, FRS, DPS
A-9: Mold Protection and Remediation	Extreme Precipitation	++	++	Neutral	+	County with Change	\$\$\$	\$	DHCA, DPS	DEP, MCGB
A-10: Green Infrastructure	Extreme Precipitation	Neutral	+	++	Neutral	County with Change	\$\$\$	\$	DPS, DEP	MCDOT, M-NCPPC
A-11: Climate Adapted Development Standards	Extreme Precipitation	+	+	Neutral	Neutral	County with Change	\$\$\$	\$\$\$	DPS	DGS, DEP
A-12: Stormwater Retention Credit Trading	Extreme Precipitation	Neutral	+	+	Neutral	County with Change	\$	\$	DEP	M-NCPPC, DPS
A-13: Ban Stormwater Management Requirement Waivers	Extreme Precipitation	Neutral	+	+	-	County with Change	\$	\$	DPS	M-NCPPC, DEP
A-14: Update Floodplain Maps	Extreme Precipitation	Neutral	Neutral	Neutral	Neutral	County with Change	\$	\$	DPS, OEMHS	M-NCPPC
A-15: Water Supply Protection	Drought	+	++	++	Neutral	County with Change	\$\$\$	\$	DEP, WSSC Water, M-NCPPC	Municipalities
A-16: Flood Rescue Resources	Extreme Precipitation	+	+	Neutral	+	County	\$\$\$	\$	FRS, MCDP, MCDOT	DGS, OEMHS, PIO, municipal police departments
A-17: On-Site Water Reuse	Drought	+	Neutral	+	Neutral	Outside County	\$	\$	DPS, WSSC Water	Municipalities
A-18: Expanded Community Gardens	Drought	+	++	+	+	County with Change	\$	\$	M-NCPPC	MCPS, OAG, HHS
A-19: Advocacy for Off-River Water Storage	N/A	Neutral	Neutral	Neutral	Neutral	Outside County	\$	\$\$\$	DEP, WSSC Water	OIR
A-20: Study Potential for Buildings in the County to Flood and Possible Remedies	N/A	Neutral	Neutral	Neutral	Neutral	County	\$	\$	DEP, OEMHS	DPS

BENNETT FRANK McCARTHY

a r c h i t e c t s , i n c .

1400 Spring Street, Suite 320, Silver Spring, Maryland 20910-2755

18 July 2023

Development Review Process Workgroup
Montgomery County Planning Board
Montgomery County Planning Department
Montgomery County Executive
Montgomery County House of Delegates Delegation
C/O Montgomery County Planning Department
2425 Reedie Drive
Wheaton, MD 20902

Re: Development Review Process Workgroup – Listening Sessions

Dear Members of the Development Review Process Workgroup

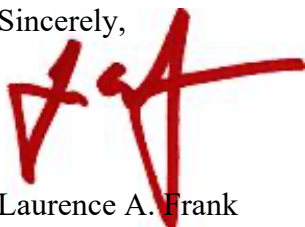
I am writing in support of the current MNCPPC regulatory plan review process. Park and Planning provides important critical review, regulation by trained professionals and experts and opportunity for community input through its many processes including master plans, policy development, planning review and public project review that is responsible for the great communities throughout the county.

This significant and important process and work the County continues to prioritize design excellence and life experience quality a priority in planning, building design and community design in our region.

The processes, review and oversight provide objective guidance and approvals for our wonderful and great communities and downtowns while preserving the County's open space, rural lands. There is a striking balance and range of residential, urban, transitional and agricultural spaces and places in the County. We owe this to the hard work of Park and Planning.

As an architect and resident in the county along with my friends and family we are profoundly impacted by the excellent work of Park and Planning daily. As an architect I work daily advocating for the quality of the built environment. As an architect and citizen I want to be a good steward of the built environment and am proud to be a resident in the County that places a similarly high priority on buildings, people and spaces.

Sincerely,



Laurence A. Frank
President and Principal

From: [Margo Kelly](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Subject: Community Development Review Process Feedback
Date: Tuesday, July 18, 2023 9:16:19 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Hello,

Per the press release that was forwarded, I'm sending you my written feedback for the Community Development Review process. I'm relatively new to the Medical Center building proposal on Georgia Ave process. But after attending a community meeting on July 11th led by the developer and various contactors, I was quite dismayed by what I heard and how poorly the meeting was run. It was hard to keep track of who was who (the developer just started speaking without introducing who he was) to begin the meeting.

As I raised and others who live in the neighborhood, traffic on Forest Glen Rd is already a major problem and supposed traffic study that the developer did (he kept saying that the county didn't require them to do it) but did one anyway, was not in any way, shape or form credible based on the experience of us who live in the neighborhood. The entrance on Woodland Drive is a huge concern and the overall size of the complex. The developer said based on their generic studies that there would only be a net increase of 78 cars a day. That's not CREDIBLE! At Georgia Ave and Forest Glen Rd., you are right next to a metro entrance, entrance to the beltway, and a couple blocks from Holy Cross Hospital, and Georgia Ave is a major commuter route into Washington, DC. Traffic is already a huge problem. We need the county to fund an objective, comprehensive traffic study of the neighborhood and how that project would affect the neighborhood.

I feel the current process is ignoring the concerns of the people who live in the Forest Glen neighborhood, and there has been no real effort to get organized, consistent feedback from us in the neighborhood. There should be some neighborhood working group that provides consistent input and get support from the County. The developer should not be driving this process, that the County needs to do more to address the concerns of the constituents in Forest Glen who are all paying taxes in the County.

Regards,
Margo Kelly
Sanford Rd

STATEMENT SUBMITTED TO
THE DEVELOPMENT REVIEW PROCESS WORKGROUP
by CHERYL GANNON, SILVER SPRING MD RESIDENT

July 27, 2023

I want to thank the Workgroup for their work toward reforming the Development Review Process. Overall, I urge the Committee to balance efficiency or expediency with protecting and improving resident engagement through transparency and opportunities for meaningful input. My recommendations are as follows:

- 1) The state should establish an office of the People's Counsel for matters under the jurisdiction of MNCPPC. The county has a statute in place for a People's Counsel, originally proposed by former County Executive Ike Leggett, but has failed to fund the position for over a decade. As the county's racial equity and social justice officer has noted, it is less wealthy BIPOC communities that will suffer the most without the help of a People's Counsel. The land use process is incredibly complex, which is why the county, the Planning Board, and developers all have land use attorneys to guide them and advocate for them. Wealthier neighborhoods also can privately fund assistance. It is only communities and individuals with less financial means that must navigate the system on their own. Unfortunately, both publicly and privately, the Montgomery County Council has indicated that it will not fund this position. Because the MNCPPC is a state created entity, I think it is reasonable to ask the state to create a People's Counsel for planning under the MNCPPC. The state has an excellent People's Counsel for utility issues and has the expertise to operate a similar office for MNCPPC. Our surrounding

jurisdictions have People's Counsel offices for land use matters. The state has a unique bi-county agency in the MNCPPC, and I believe the state also has a concomitant interest and responsibility to provide the citizens of those counties with the technical advice and representation of the public interest on land use matters.

- 2) Require that the list of registered lobbyists for MNCPPC be accessible to the public by internet and add penalties to the statute for failure to register or report accurately. Even though there is a long-standing statute requiring lobbyist registration, the MNCPPC failed to establish a system for over a decade and residents had to pursue the issue to seek compliance with the law. And currently, an MPIA request must be submitted to see the list of registered lobbyists. Despite the registration requirement and the newly established registration system, only a handful of lobbyists are registered as of a year ago, and most of the 8 or 10 lobbyists came from the same law firm. The purpose of lobbying registration laws is to promote transparency, accountability and integrity in government. Achieving the goals will require open access to the information and stronger enforcement of the laws. Specific penalties and enforcement mechanisms must be created to regulate lobbying of the MNCPPC and Montgomery Planning.
- 3) Public notice requirements must be strengthened for matters before the Planning Board and MNCPPC. Last minute changes in agenda, schedules and documents for items under consideration limits the ability of the public to participate, since often these meetings are held during work hours or changes are not noticed by residents until too late. I also strongly urge this Committee to create a prohibition against Commissioners giving advance notice of policy initiatives to select groups

outside of official notification channels. In 2020, I received a personal Facebook message from a Montgomery Planning Commissioner about the Silver Spring adjacent communities plan requesting help building support and testifying in support. Weeks later my Civic Association disclosed it had received notice, and only a few days before the hearing. At that point, I realized that I had received notice well in advance of the Civic Association. Even worse, a paid lobbyist posted on social media after the first hearing that they along with another paid lobbyist had organized all testimony in support. A check of the dates on those submitted statements shows they were submitted with identical talking points on dates prior to the disclosures to the Civics. This type of activity where Commissioners or staff give advance notice to select parties must be prohibited by statute or made explicitly an ethics violation. All relevant parties, including the public and neighborhoods should receive notice at the same time and through regular notification channels. This unfortunate event I have detailed here sent two messages—that the outcome was already decided, and that certain groups or neighborhoods were not welcome in the discussion. This ultimately undermines the trust and confidence in the process and agency and thwarts efforts at community consensus.

- 4) Amend the statute regarding appointments to Montgomery County Planning Board to create penalties and disincentives for disregard of the law. The Maryland Attorney General issued an advisory opinion in May that the Council violated state law by swearing in new Commissioners before the 30-day time period for County Executive review had taken place. Those Commissioners, seated illegally, then acted on major development projects, calling into question

the legitimacy of those actions. The Council and staff were aware of the law's requirements. Recent and previous Council memos had standard language reminding Council members of the process and timeline-- nevertheless the law was ignored in a move that was political power grab by the Council and irresponsible score settling on the part of Councilmembers. Although the long-standing law on appointments creates shared responsibility for naming and seating new Commissioners, including an approval or disapproval option with the County Executive, there is no remedy in the statute if the law is broken. The statute should be amended to, at a minimum, nullify official actions of the Montgomery Planning Board when Commissioners are not seated legally. There could also be consideration of stronger measures, such as making the illegally seated Commissioners ineligible for appointment. Blatant and willful disregard of the law must not be tolerated.

- 5) Make ethics complaints filed against Commissioners public. Land use decisions involve significant financial and economic impact to the county, residents and individuals involved or affected. Public scrutiny of the ethics complaints will build integrity into the process for an agency where the potential for abuse exists that can have severely detrimental impacts on residents, neighborhoods, and the economy and quality of life. Currently, the ethics complaints leak out by word of mouth and some residents have been aware of ethics complaints filed over the past decade. An open public view of the complaints and adjudication process will reassure the public that the integrity of the process is protected, and conflicts of interest and other ethical considerations are attended to and will also counteract inaccurate gossip about ethics complaints.

The County faces significant challenges in creating adequate affordable housing. A fair, transparent, equitable and lawful process is the best way to achieve the community consensus needed to make meaningful progress toward those goals.

Thank you.

Cheryl Gannon
1507 Noyes Dr
Silver Spring, MD 20910



Delegate Lesley Lopez, Chair

Montgomery County Development Review Process Workgroup

development@montgomeryplanning.org, meredith.wellington@montgomerycountymd.gov

July 31, 2023

Dear Del. Lopez and working group members,

Thank you for the opportunity to submit testimony on the development review process in Montgomery County. The Sierra Club Montgomery County Group has observed several factors which, in our view, impede the ability of citizens from engaging meaningfully in the development review process. We find that the 1) Public notification of upcoming projects is insufficient; 2) Failure to examine climate change considerations leads to suboptimal decisions; 3) Improving participation rates of agencies and utilities in development application reviews would improve climate and project outcomes; 4) Finding relevant information from DPS and MNCPPC is difficult; 5) the County needs to address light pollution in the zoning code.

1. PUBLIC NOTIFICATION OF UPCOMING PROJECTS IS INSUFFICIENT. The current system by which interested parties are notified about upcoming projects is slow, inefficient, costly and excludes many affected stakeholders. Notices are printed on paper and mailed to adjacent property owners, community groups and registered civic / homeowners associations. There is currently no centralized place where such notices are promptly posted online and can be easily located. There is a time lag for documents posted to the planning department's DAIC system. As a countywide registered community group, Sierra Club Montgomery County Group receives a flood of paper notices mailed to our P.O. Box regarding upcoming development meetings. As a volunteer organization, we are only able to check our mail every couple weeks which means we often see notices too late. We would prefer to receive notices electronically so that we could get them more quickly and more easily disseminate them within our organization.

Even more concerning is the fact that many affected parties are excluded from notice. Current rules require that mailed notices are sent to adjacent property owners and registered civic/ homeowners associations within a certain radius. This means nearby renters are excluded. The planning department relies on a database of community groups, civic associations and homeowners associations to create mailing lists. But the terms civic association and homeowners association are not defined in law and there is not a good system to keep the database updated. Not every homeowner falls within a civic/homeowners association. The result is that many interested people receive no notice of opportunities to learn about and weigh in on projects proposed in their neighborhoods.

Examples:

- For the Flats at Knowles Station project in Kensington, the neighbors most affected did not receive direct notice of public hearings. Boundaries for the Kensington Estates Civic Association (CA0809) are incorrect. The West Kensington Civic Association (CA0103) has been nonexistent for decades and the listed contact died in 2011.
- For the MHP Nebel Street project in White Flint, adjacent condo owners were notified but adjacent renters were not

2. FAILURE TO EXAMINE CLIMATE CHANGE CONSIDERATIONS LEADS TO SUBOPTIMAL DECISIONS. Storms on July 28th and 29th are reminders of the vulnerability of the grid. Electrification of buildings and vehicles is key to the attainment of Montgomery County's aggressive climate goals. Electrification requires a transition to a more resilient grid which means that we must maximize opportunities to place overhead high voltage electric lines underground. However, this effort is hindered by the lack of consistency in development decisions and lack of expertise by planning staff on matters related to utility undergrounding. This is seen across the county and even within approved sector plans. As we highlighted in a recent letter, Pepco is absent from Development Review Committee meetings and Planning Board public hearings. Instead of being worked out in advance, the details of utility undergrounding decisions are left unresolved and consume an inordinate amount of the Planning Board's time and attention at public hearings. Some projects are quietly given waivers on sector plan requirements for undergrounding to the surprise of affected neighbors. Resulting decisions are haphazard, inconsistent and fail to maximize opportunities to make the grid more resilient.

One solution is for the County Council to advance the adoption of a Functional Utility Plan by including it in the Planning Board's work plan as recommended in the approved Complete Streets Design Guideline. Another solution is for utilities like Pepco to begin fully participating in meetings of the Development Review Committee.

Examples:

- Chevy Chase Lake Sector Plan (downcounty):
 - Block B quietly given a waiver of sector plan undergrounding requirements.
 - Toll Brothers project on Manor Road treated differently than nearby EYA/Lindley project on Chevy Chase Lake Drive. Planning staff were unable to answer Planning Board questions about the cost of undergrounding during the public hearing.
- White Flint Sector Plan (mid-county): Undergrounding for MHP Nebel Street project not coordinated with planned Pepco work at nearby substation. Project amended to allow for utility relocation instead of undergrounding.
- MARC Rail Communities Sector Plan (upcounty): Waters Village required to spend up to \$400,000 toward undergrounding of low voltage and telecom lines.
- Kensington Sector Plan (mid-county): Flats at Knowles Station project required to place utilities underground only along Knowles Ave frontage instead of the entire block.

3. IMPROVING PARTICIPATION RATES OF COUNTY AGENCIES AND UTILITY SERVICE PROVIDERS IN DEVELOPMENT APPLICATION REVIEWS WOULD IMPROVE PROJECT AND CLIMATE OUTCOMES.

The Development Review Committee is defined in Chapter 50 of the county code and its process is designed to include planning staff, the applicant, utilities, municipalities, Maryland State Highway Administration, Montgomery County Department of Transportation, the Department of Environment Protection, the Department of Permitting Services, etc. Agency roles are prescribed narrowly and there are additional agencies that should be included to give greater voice to climate change, resilience and environmental concerns. Some agencies and utilities fail to participate. As recommended in the draft pedestrian master plan, transferring ownership of state roads to the County would also streamline the development review process.

4. FINDING RELEVANT INFORMATION FROM DPS & MNCPPC IS DIFFICULT.

The Department of Permitting Services website is difficult to navigate by members of the public seeking information. For example, when searching for permits at an address, there is no date column so a searcher must click on each individual entry to learn whether a permit is from 1996 or 2023. The permit documents themselves are not online and must be requested separately. The requirement to enter a house number is constraining as some properties under development may not have a final address. A search for public rights of way permits for the MHP Nebel Street project revealed that many permits are missing from DPS' online activity map.

Information about past projects can be difficult to obtain from MNCPPC. When past records are requested the agency often defaults to an adversarial MPIA process and then cannot locate requested files. A better model is the approach used by the board of appeals. Any person can request the file for any past project.

5. NEED TO ADDRESS LIGHT POLLUTION IN THE ZONING CODE.

As mentioned in our recent letter to Pepco, we were disappointed by their choice of unshielded “wall pack” outdoor light fixtures at their recently-built but yet to be energized White Flint substation. Such poorly-designed fixtures hurt visibility and waste energy by directing light sideways and upwards, contributing to light pollution and sky glow. There are numerous loopholes in the zoning code that allow property owners to install poorly designed outdoor light fixtures.

Sincerely,

Darian Unger, Chair
Sierra Club Montgomery County Group
dwunger@howard.edu

Note: This testimony has the support of the majority of the Executive Committee of the Sierra Club Montgomery County Group. We will reconfirm at our upcoming Executive Committee meeting scheduled for August 14th.

TO: Planning Board Development Review Workgroup

FROM: Lucy McFadden , Bethesda, MD

RE: Development Application Review Process

DATE: August 1, 2023

My name is Lucy McFadden. I am a retired NASA-scientist, a volunteer Maryland Naturalist, and a member of the Climate Coalition MoCo. I am here to underscore the importance of fulfilling your role in implementing the [Montgomery County Climate Action Plan](#) (CAP)¹ adopted in 2021 and ensuring that the [Climate Assessments \(Bill 3-22\)](#) is effectively implemented so that zoning text amendments (ZTA's) and master plans are reviewed with respect to their impact on climate change.

This summer's heat, violent storms with damaging winds and rains are only the latest wake-up calls to the urgency of taking action now. Around town I see large, carbon-sequestering trees removed for development², and posted signs (July 19th) along [Cabin John Creek](#) reporting high levels of *e coli* following heavy rains. In my efforts to engage as a citizen to understand how my neighborhood has evolved in the 29 years that I've lived here and attempt to influence its coming decades of development under the forces of nature we're experiencing today, it has become clear that the policies and regulations of the past 30 years won't get us through the next 30 years, as they were designed for a different era.² I thank the previous planning board for starting the process of defining the framework for which updated laws and regulations will hopefully support a livable community resilient to and adapted to climate change and trust you, as the new planning board will advise the Council on suitable laws and regulations that will implement the CAP and Thrive 2050 plans.

The CAP states that:

Thrive 2050's focus on the environmental resilience of the County's built environment relates to such issues as floodplains, imperviousness, stream protection, and the Agricultural Reserve. ... Its recommended actions to be implemented over the coming years will have a major impact on the County's ... GHG emissions, carbon sequestration, and adaptation [goals] Together these plans will create a comprehensive approach to [managing] climate change at the local level. p.8 attached

The CAP contains many climate adaptation and sequestration actions related to the development review process. In fact, 20 actions are the responsibility of the Planning Board, 20 of Department of Permitting Services, some 40 of Department of Transportation, and of course many more fall in the realm of Department of Environmental Protection.

So, here are some examples that the Development Review process needs to incorporate to ensure that development comports with not just the letter of the law but the spirit of the CAP and Thrive 2050 to protect us from and facilitate adaptation to climate change:

G-7 and G-8: Update planning, policy, codes, operations, and procurement to account for climate change impacts, and prioritize vulnerable residents,

A-6: Require all existing and new roofs to be (1) green roofs, (2) house photovoltaic systems tied to the building, or (3) cool/albedo roofs.

A-7: Update public space and streetscape design standards to require cool-colored permeable surfaces, wider bike lanes and sidewalks, and a substantial percentage of vegetation cover.

A-10: Require green infrastructure practices for new and existing properties to reduce and filter runoff on private and public properties.

S-1, S-2, and S-3: Retain and increase forests and tree canopy, and protect meadows and wetlands

A-15: Protect water supply aquifers and watersheds by increasing land protections and stream corridor revitalization efforts.

A-18: Create more community gardens in urban and suburban areas as one way to combat food insecurity in the county and to reduce farm-to-table distance.

S-6: Pursue whole-system, nature- based solutions that comprehensively measure societal and economic benefits along with carbon sequestration and biodiversity benefits.

B-7: Net zero energy for new construction

T-1 and T-4: Expand public transit, constrain cars in urban areas, and limit major new road construction.

I trust you will seize the opportunity you have now, with your being a newly appointed planning board, when our planet is besieged by climate crises and when clear action is needed to build resilience and adapt to the changes forced upon us by nature.

Long term visions and plans are meaningless if we don't aggressively find ways to make them a reality. This is what the public wants. Please, be intentional about ensuring the Development Application Review process makes this happen.

Respectfully,

Lucy McFadden

¹Montgomery County Climate Action Plan (CAP): <https://www.montgomerycountymd.gov/climate/Resources/Files/climate/climate-action-plan.pdf>

Climate Assessment Legislation: <https://montgomeryplanning.org/planning/climate-assessment-of-zoning-text-amendments-and-master-plans/>

²street trees removed at Westbard Shopping Center, a large Sycamore removed along River Rd heading west from Western Ave, and loss of wooded areas in the [WMAL Bethesda development](#) behind the fire station on Democracy Blvd, as well as at the site of the [ELP Bethesda at Rock Spring LLC development](#).

Relationship Between the Climate Action Plan and the Thrive Montgomery 2050 Plan

The CAP addresses the growing threat of climate change, focusing on GHG emissions, carbon sequestration, and adaptation to climate change, and it raises awareness of persistent inequities in our society. These issues are among those that prompted the Montgomery County Planning Board to initiate a comprehensive update of the County's General Plan, an update known as Thrive Montgomery 2050 (Thrive 2050). This plan establishes three overarching goals for the County over the next 30 years: economic health, equity, and environmental resilience. It is a high-level document that focuses on long-range planning and policies to guide the physical development of the County, including where and how land will be preserved or developed for housing, office buildings, parks, agriculture, recreation, and transportation infrastructure.

Thrive 2050's focus on the environmental resilience of the County's built environment relates to such issues as floodplains, imperviousness, stream protection, and the Agricultural Reserve. Its policy guidance is broader than the CAP's. Its recommended actions to be implemented over the coming years will have a major impact on the County's environmental goals in general, in addition to the GHG emissions, carbon sequestration, and adaptation to climate change that are the focus of the CAP. County staff and Planning Department staff worked to ensure that the goals, policies, and actions recommended by Thrive 2050 and the CAP are consistent. Together these plans will create a comprehensive approach to climate change at the local level.



Thrive Montgomery 2050 community vision...

This chart is included in Montgomery County's Climate Action Plan. Page 8. <https://www.montgomerycountymd.gov/climate/Resources/Files/climate/climate-action-plan.pdf>

ROBERTA FAUL-ZEITLER
8904 Colesville Road, Silver Spring MD 20910
Email faulzeitler@verizon.net Tel (301) 565-0965

August 1, 2023

Comments for the Development Review Process Workgroup

Thank you for this opportunity to offer several observations and suggestions in conjunction with the Development Review Process Committee. My comments here focus on an aspect of County master planning that has substantial consequences for neighborhoods and communities, inequity in the planning process, and impacts on development review.

We are at an inflection point: the newly appointed Planning Board and recently expanded County Council should be poised to make major improvements in the planning process, in the Council's oversight of the Planning Board, in elevating public participation and equity through all planning and development review processes, and in the individual accountability of the Board and Councilmembers.

Montgomery Planning ...“oversees both the master planning of communities, which establishes the *vision for an area*, and the development review process to implement that vision.”

The master planning of communities, in my opinion, is more than visionary or aspirational: it is the foundation and basis for all wise decision-making in the review of individual development proposals-- to ensure the well-being of all communities, responsible land use, economic vitality, and responsible care and use of all natural assets.

My comments here focus on an aspect of Master Planning process that is flawed. Unless corrected, this flaw has the potential to diminish public confidence in the planning process, deny adequate participation and equity in future land use decisions, and reduce confidence in the Planning Board and County officials.

Flawed Approval of Boundaries in Master Planning

The Master Planning process has a significant flaw that should be recognized and redressed to ensure full community participation, equitable decision making, and allow beneficial community recommendations in the master planning process.

The narrative attached below offers three examples of how the Planning Board uses its authority to avoid public participation in fundamental decisions—namely, establishing the boundary of master/sector plans that can impact neighborhoods and communities—and opportunities for consequential public input.

The Planning Board is authorized to create, revise or expand a boundary for a master plan or sector plan (called “study area”). The Planning staff formulates a study area –or several possible options for an area –that will be developed into a master/sector plan. The Planning Board meets (public meeting not required), discusses the “study area” option, and takes a vote. The vote is a “legal act” as defined by former Planning Board Chair Anderson. Under the current master plan process, the Planning Board becomes the final arbiter of the boundary when it votes to approve the master plan boundary/ “study area.”

What is wrong here? There is no requirement for a public hearing prior to the Planning Board vote to approve a boundary (called a “study area”), no public testimony by community representative and residents, no robust comment period.

This flaw denies the community the opportunity to address the Planning Board with concerns related to the boundary of a proposed new master/sector plan, or revisions of a boundary in an extant master plan. After the Planning Board’s approval of a boundary, it is *virtually impossible* to modify the boundary in subsequent stages of the master planning process.

(To be clear: Only after a boundary has already been approved and established by the Board, a public hearing is then held at the Planning Board for community comments on a fleshed-out draft master plan.)

RECOMMENDATIONS: The Master Planning process needs be changed: 1) to provide robust advance notification to all potentially affected communities, of the Planning Board’s intention to consider and approve a “study area” (boundary) for a new or revised master plan or sector plan: 2) to conduct a public hearing with the Planning Board and provide a comment period, that allows robust community input and interaction with the Board for boundary revisions or changes, prior to a final Board vote approving a “study area” (boundary) for a new or revised master plan or sector plan. 3) The approval by the Board must take place in a public Planning Board meeting.

The narrative below offers three examples of how the Planning Board used its authority to eclipse public participation in the fundamental decision of establishing a master/sector plan boundary for a given area of Montgomery County—as well as denying the opportunity for equitable public input and redress on a proposed boundary expansion.

The flaw is evident in the examples below (and likely in more) of recently approved plans: The Downtown Silver Spring and Adjacent Communities Master Plan (2022); Forest Glen/Montgomery Hills Sector Plan (2020); and the Bethesda Downtown Plan (2017).

The Montgomery Hills/Forest Glen Sector Plan (approved 2020) was created with a “study area” (boundary) that formed an entirely new sector plan, dominated by a transportation corridor. It adds portions of two residential neighborhoods that have been in the extant North and West Silver Spring Master Plan (2000 as modified). The approved new boundary focuses on Georgia

Avenue, from Dennis Avenue to Spring Street, with extensive recommendations from the State Highway Administration study on future transit, transportation and pedestrian safety. While intended to address a 20-year planning horizon for Montgomery Hills and Forest Glen, the sector plan added longitudinal strips of R60 zoned residential properties and sites bordering both sides of Georgia Avenue in two established neighborhoods: Woodside Park and Woodside (at that time both were in the N&W Silver Spring Plan). These properties were “moved” for planning purposes into the new sector plan.

The Planning Board met in March 2017 and reviewed satellite imagery of three options for the boundary (“study area”); after 45 minutes of discussion by the Commissioners, with no public testimony or recorded public input, the Planning Board voted and approved the “study area” boundary. All three options called for adding the strips of residential properties in Woodside and Woodside Park, which are not contiguous with Montgomery Hills or Forest Glen. There was NO Board discussion related to adding the strips of Woodside/Woodside Park properties.

The discussion and approval by the Board was made with no public hearing, no public testimony, and no recorded public input as to how the boundary changes might affect these two neighborhoods and the property owners. This was a “legal act” as defined in 2020 by Chairman Anderson.

Without notification and the opportunity for a public hearing, the civic associations of these two neighborhoods (and the residents) were uninformed of the proposed boundary changes – and unaware that the new boundary absorbed some of their properties for planning purposes. The civic groups were unaware of this change until well after the sector plan had been approved by the County Council in Spring 2020.

Downtown Silver Spring and Adjacent Communities Master Plan (2022)

In spring 2020 the Planning staff proposed the study area for a new master plan for the Downtown (formerly called the Master Plan for the CBD/ Central Business District (2000) with no proposed change in the boundary of the 386-acre area of the CBD. One Commissioner of the Planning Board disagreed and urged expansion of the boundary at a March planning meeting. The planners then created four options for the Board’s review, one of which would add 118 acres of R60/R90 zoned residential property in the extant North & West Silver Spring Master Plan to the Downtown boundary.

The affected close-in communities (East Silver Spring, Woodside Park, Woodside Forest, Woodside, Seven Oaks Evanswood) became aware of the Planning Board’s intentions -- just days before the Board was going to vote privately on the boundary expansion. There was a major public outcry by established civic organizations and individuals about the potential impacts on the neighborhoods and property owners.

The Planning Board was forced, from a public relations perspective only, to change from its private consideration (consent calendar agenda) – and on only a few days’ notice, to hold a listening session that allowed abbreviated public comment and submission of letters. There was no requirement to hold a public hearing and seek equitable community input prior to Board approval of an expanded boundary – and the Planning Board Chair made that clear in his public remarks. He also indicated that boundary “expansion” had already occurred in previous master plans without a public hearing (See Montgomery Hills and Bethesda Downtown plans).

Five minutes after the listening session ended, three Commissioners voted immediately to approve the most expansive boundary option (increase the size of the CBD with 118 acres of R60 zoned close-in residential areas). The new Downtown boundary was increased by 30% to 504 acres-- and Silver Spring neighborhoods had no recourse.

Efforts to achieve a boundary reversal required two years of concerted community opposition with the County Council. Only at the very end of the master plan process – in a County Council meeting in April 2022 to approve the Master Plan-- Councilmembers approved (9-0) a motion from Councilmember Hucker to reverse the boundary expansion. In the end, the Planning Board returned 80 acres (of the 118 acres) of close-in neighborhoods back to the extant North & West Silver Spring Master Plan.

Bethesda Downtown (2017)

There are fewer neighborhood and community sources on what transpired with the Planning Board approval that created an expanded boundary for the Bethesda Downtown sector plan -- a comprehensive amendment to the approved and adopted 1994 Bethesda CBD Sector Plan and the 2006 Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD.

However, the flaw in the process was fundamentally the same: The boundary was changed in a meeting of the Planning Board, and expanded to include residential properties on other close-in Bethesda streets. There was no public testimony or community comment period related to the boundary expansion. Residents only learned well into the master plan process that the Planning Board approved an expanded boundary for the Downtown without any public participation. They were told: “We can change the boundary any time. We’re allowed to do that.” (Source A. Farber)

We can and must do better in public involvement and respected participation if master/sector plans are to serve as the foundation for future County development.

Thank you for the opportunity to submit my comments.

Roberta Fani-Zeitler

Comments on Montgomery County Development Policies and Practices

The Montgomery County Civic Federation Inc. is pleased to comment on the ongoing review of County development policies and practices by the Montgomery County Development Review Process Workgroup.

Members of the Montgomery County Civic Federation, Inc. believe very strongly in transparency, accountability and efficiency when it comes to our public institutions, and especially the Montgomery County Government and the Maryland-National Capital Park and Planning Commission. In our work, we will continue to advocate for more attention and additional resources directed to improving these emphases at all levels of government.

There are several areas of concern that we want to highlight in this note.

1. **Planning Board - Agendas - Public Participation.** We have a longstanding concern about the integrity of Planning Board agendas. Oftentimes, these agendas have not been timely available to the public, and agenda items have been included or removed without adequate public notice. We believe that the public needs to be properly and timely informed about the schedule and items to be considered at MNC-PPC Board meetings and other meetings. We further believe that there should be sanctions if there are changes in agendas without public notification. As always, we believe that all of these meetings should be open to the public and, to the extent possible, recorded by audio and visual means and made available to the public as soon as possible. Greater public participation is essential for greater racial equity and social justice in development planning and project implementation.
2. **Planning, Transportation & Environment expertise in the Executive.** As we understand the process, having redundant transportation and environmental expertise in the Montgomery County Government and the Planning Department seems to be unnecessary, expensive and inefficient—causing delays in the project application and review process. We believe that these key functions should be the responsibility of the Executive Branch, which has the ultimate responsibility for implementing transportation and environmental projects.
3. **Pre-application community meetings.** We think it would be an improvement to the development review process in the County if pre-application community meetings were organized by the Montgomery County Planning Department, rather than by the applicant. The Planning Department has expertise and outreach capacities in this area that are greater than that of project applicants.

4. **The Bi-County Planning Organization.** M-NCPPC is nearly one hundred years old, and needs to be reevaluated in terms of its costs and continuing efficiency. There seems to be little need in 2023 for a bi-county development planning and parks agency when those functions can be handled more appropriately and efficiently under the executive branch of County government. Created by the State Government as a bi-county organization in the early 20th century, M-NCPPC and its constituent parts are subject to little supervision and accountability. Ethics violations, for example, are generally handled internally, and are not subject to the authority of the Maryland Attorney General. The General Assembly has rarely considered issues related to the Commission, and complaints about its activities and decisions are not regularly taken up by higher authorities. We support the establishment of a State-level task force to study the structure of M-NCPPC in 2023 to make recommendations about its structure, costs, efficiencies and accountability. As an example, we think that there is merit in moving the planners to the County Government. There is the need to assess the continuing viability and overall fairness of a state agency handling development approvals, while separate County agencies are responsible for implementation.
5. **Office of the People's Counsel.** The Montgomery County Civic Federation strongly supports a Montgomery County Office of the People's Counsel, a County government-funded office that can provide advocacy and valuable information to Montgomery County residents about development processes and projects in the County. Funding the OPC has been the highest priority of the MCCF in recent years, and we have been pleased to have the support of the Montgomery County Executive and many County residents in this regard. Many members of the Montgomery County Council have also expressed support for this agency, and we hope to see this office funded through an upcoming supplemental budget request or in next year's Operating Budget. We believe that OPC can be and will be an important actor in strengthening the County's development policies and practices as it will facilitate greater knowledge of and participation of residents throughout the County in planning and development. Despite its importance, however, some members of the Council Council have strongly opposed the OPC and recently considered a bill to remove it from the county code. If this opposition continues, we hope that our State Delegation would establish such an office for the benefit of Montgomery County residents.

Thank you for the opportunity to comment on this ongoing review.

Alan Bowser, President
Montgomery County Civic Federation, Inc.
July 31, 2023

From: Daniel Meijer
To: Alan Bowser; MC-Development; Meredith Wellington
Cc: Elizabeth Joyce; Cheryl Gannon; Jamison Adcock; Jerry Garson; Karen Cordry; Peggy Dennis; Jay Elvove; Brenda Freeman; Jacquie Bokow; Kimblyn Persaud
Subject: Re: MC Civic Federation - Comments on Development Policies and Practices
Date: Tuesday, August 1, 2023 12:00:27 PM
Attachments: 0C425F5EE8734F5ABC779BEF0105598D.png
8045 - Order and Opinion.pdf

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Here is what I wrote:

Montgomery County's Development Review Process Workgroup

development@montgomeryplanning.org

meridith.wellington@montgomerycountymd.gov

Dear members of the Development Review Process Workshop,

I understand from a Montgomery County Government press release titled: "Feedback Will Be Sought on Montgomery County's Development Review Process ..." that "The workgroup members are interested in: ... Suggestions on improving the development review process..."

I suggest the workgroup find ways on stopping conflicting interpretations of the zoning ordinance by M-NCPPC staff in their "Project Plan" reports to the N-NCPPC Planning Board.

An example may be found in the "Newell Street Lofts" staff report (case #9-03000), dated 2/12/2003, presented to the Planning Board as item 8 (MCPB Agenda 2/27/02) in which it states "The Overlay Zone requires that building heights along Newell Street confront residential uses may not exceed 45 feet ..."

10 years later, said staff took the opposite position when they asserted such restrictions don't apply to an adjacent parcel on that street - expressed in their report (on Project Plan # 920130020) dated 12/7/2012. Fortunately, the Court found that to be in violation of the law (see Court Opinion, Civil case # 378604, dated 2/21/2014 – copy attached).

This example of the staff modifying the law to fit the project rather than modifying the project to fit the law is what I would like Development Review Process members to address.

Thank you for your concern on this important matter,

Daniel Meijer

From: Alan Bowser <alan.bowser@gmail.com>
Sent: Tuesday, August 1, 2023 11:46 AM
To: development@montgomeryplanning.org <development@montgomeryplanning.org>; Meredith Wellington <Meredith.Wellington@montgomerycountymd.gov>
Cc: Alan Bowser <alan.bowser@gmail.com>; Elizabeth Joyce <lafleurjoyce@gmail.com>; Cheryl Gannon <Gannon1507@gmail.com>; Jamison Adcock <jamisonadcock@yahoo.com>; Jerry Garson

<garson@comcast.net>; Karen Cordry <karenc425@aol.com>; Peggy Dennis <hotyakker@gmail.com>; Jay Elvove <jay777@gmail.com>; Brenda Freeman <brenda_freeman2002@yahoo.com>; Jacquie Bokow <jcbokow@gmail.com>; Daniel Meijer <dmeijer@hotmail.com>; Kimblyn Persaud <Kimblynpersaud@aol.com>
Subject: MC Civic Federation - Comments on Development Policies and Practices

Montgomery County Civic Federation, Inc Comments on Montgomery County Development Policies and Practices

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There are several areas of concern that we want to highlight in this note.

Planning Board - Agendas - Public Participation. We have a longstanding concern about the integrity of Planning Board agendas. Oftentimes, these agendas have not been timely available to the public, and agenda items have been included or removed without adequate public notice. We believe that the public needs to be properly and timely informed about the schedule and items to be considered at M-NCPPC Board meetings and other meetings. We further believe that there should be sanctions if there are changes in agendas without public notification. As always, we believe that all of these meetings should be open to the public and, to the extent possible, recorded by audio and visual means and made available to the public as soon as possible. Greater public participation is essential for greater racial equity and social justice in development planning and project implementation.

Planning, Transportation & Environment expertise in the Executive. As we understand the process, having redundant transportation and environmental expertise in the Montgomery County Government and the Planning Department seems to be unnecessary, expensive and inefficient—causing delays in the project application and review process. We believe that these key functions should be the responsibility of the Executive Branch, which has the ultimate responsibility for implementing transportation and environmental projects.

Pre-application community meetings. We think it would be an improvement to the development review process in the County if pre-application community meetings were organized by the Montgomery County Planning Department, rather than by the applicant. The Planning Department has expertise and outreach capacities in this area

that are greater than that of project applicants.

The Bi-County Planning Organization. M-NCPPC is nearly one hundred years old, and needs to be reevaluated in terms of its costs and continuing efficiency. There seems to be little need in 2023 for a bi-county development planning and parks agency when those functions can be handled more appropriately and efficiently under the executive branch of County government. Created by the State Government as a bi-county organization in the early 20th century, M-NCPPC and its constituent parts are subject to little supervision and accountability. Ethics violations, for example, are generally handled internally, and are not subject to the authority of the Maryland Attorney General. The General Assembly has rarely considered issues related to the Commission, and complaints about its activities and decisions are not regularly taken up by higher authorities. We support the establishment of a State-level task force to study the structure of M-NCPPC in 2023 to make recommendations about its structure, costs, efficiencies and accountability. As an example, we think that there is merit in moving the planners to the County Government. There is the need to assess the continuing viability and overall fairness of a state agency handling development approvals, while separate County agencies are responsible for implementation.

Office of the People's Counsel. The Montgomery County Civic Federation strongly supports a Montgomery County Office of the People's Counsel, a County government-funded office that can provide advocacy and valuable information to Montgomery County residents about development processes and projects in the County. Funding the OPC has been the highest priority of the MCCF in recent years, and we have been pleased to have the support of the Montgomery County Executive and many County residents in this regard. Many members of the Montgomery County Council have also expressed support for this agency, and we hope to see this office funded through an upcoming supplemental budget request or in next year's Operating Budget. We believe that OPC can be and will be an important actor in strengthening the County's development policies and practices as it will facilitate greater knowledge of and participation of residents throughout the County in planning and development. Despite its importance, however, some members of the Council Council have strongly opposed the OPC and recently considered a bill to remove it from the county code. If this opposition continues, we hope that our State Delegation would establish such an office for the benefit of Montgomery County residents.

Thank you for the opportunity to comment on this ongoing review.

Alan Bowser, President
Montgomery County Civic Federation, Inc.
July 31, 2023

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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FEB 24 2014

8045 Newell Street Condominium Assoc.,
et al.

v.

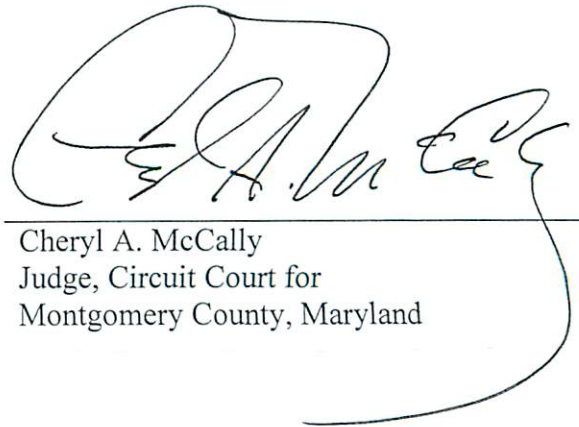
Civil No. 378604

Montgomery County Planning Board

Order

For the reasons stated in the court's opinion, the decision in Resolution No. 13-74 of the Montgomery County Planning Board, this 20th day of February, 2014, by the Circuit Court of Montgomery County, Maryland, is hereby **VACATED**; and it is further

ORDERED, that this matter be **REMANDED** to the Montgomery County Planning Board for further proceedings consistent with this opinion.



Cheryl A. McCally
Judge, Circuit Court for
Montgomery County, Maryland

ENTERED

FEB 21 2014

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Clerk of the Circuit Court
Montgomery County, Md.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

8045 Newell Street Condominium Assoc.,
et al.

v.

Montgomery County Planning Board

Civil No. 378604

RECEIVED
FEB 24 2014

Opinion

Pursuant to Maryland Rule 7-200, *et seq.*, Petitioners, 8045 Newell Street Condominium Assoc. *et al.*, seek judicial review of Respondent, Montgomery County Planning Board's (Board), decision in Resolution No. 13-74 to approve Respondent, Comstock Newell, L.C.'s (Developer), Project Plan No. 920130020 (Plan) for the development of 8100 Newell Street, Silver Spring, Maryland (Property). Petitioners filed Petitioners' Rule 7-207 Memorandum. D.E. 13. The Board filed Answering Memorandum of The Montgomery County Planning Board. D.E. 15. The Developer filed Respondent Comstock Newell, L.C.'s Response to Petitioners' Memorandum of Law. D.E. 16. Petitioners filed Petitioners' Consolidated Rule 7-207 Reply Memorandum. D.E. 17. On January 14, 2014, all parties appeared before the court represented by counsel for a hearing to supplement their filings.

Background

The Property lies in an area of Silver Spring that is zoned as CBD-1 and is part of the Ripley/South Silver Spring Overlay Zone. The Property lies on the boundary of the Overlay Zone. Section 59-C-18.2 of the Montgomery County Code addresses the restrictions that govern this overlay zone. Specifically, § 59-C-18.202(b) states:

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Clerk of the Circuit Court
Montgomery County, Md.

Development standards. The development standards are the same as those in the underlying zones, except:

- (1) 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. However, this building height may be increased to:
 - (A) A maximum of 90 feet for any building or portion of a building that is set back at least 60 feet from the street; or
 - (B) A maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and Newell Street and includes a public parking garage constructed under a General Development Agreement with the County.

Montgomery Cnty. Zoning Ordinance (2013), *available at*

<http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgome>
[mont_md_mc.](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgome)

In this Overlay Zone, the border between Maryland and the District of Columbia runs along Eastern Avenue. Newell Street runs perpendicular to Eastern Avenue and the District of Columbia border. Across Eastern Avenue lie single-family homes in the District of Columbia. Continuing east along Eastern Avenue, the single-family homes on the District side end and non-residential buildings begin. Across Newell Street lie multi-dwelling garden apartments. Currently, a public storage facility is on the Property at the corner of Newell Street and Eastern Avenue. At issue is the first sentence of § 59-C-18.202(b)(1). Specifically, regarding the application of the qualifying phrase “that confronts a residential zone in the District of Columbia.”

After two hearings, held December 20, 2012 and continued May 16, 2013, the Board interpreted the qualifying phrase to apply to both Newell Street and Eastern Avenue. Interpreted in this way, the height restriction would only apply to the areas of either street where that street “confronts a residential zone in the District of Columbia.”

This interpretation directly contradicted the Board’s February 12, 2003 decision. That ten (10) year old decision, which determined the restrictions on the development of Petitioners’

building, interpreted the qualifying phrase to apply only to Eastern Avenue. Interpreted in this way, the height restriction applied along the entirety of Newell Street.

The Board's most recent interpretation of the height restriction allows the Developer to proceed with the Plan to turn the storage facility into a 3,100 square foot retail and 156,815 square foot residential development. Petitioners appeal the Board's decision. They argue the height restriction should apply along the length of Newell, as the Board previously decided.

Standard of Review

Generally, "judicial review of administrative agency action is narrow." *Watkins v. Dep't of Pub. Safety & Corr. Servs.*, 377 Md. 34, 46, 831 A.2d 1079, 1086 (2003) (citation omitted). This court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise ... so long as the agency's determination is based on 'substantial evidence.'" *People's Council for Balt. Cnty. v. Surina*, 400 Md. 662, 681, 929 A.2d 899, 910 (2007). The agency is accorded deference to its interpretation of a statute that it administers. *Watkins*, 377 Md. at 46, 831 A.2d at 1086.

However, the court's review is "less deferential ... where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. *Surina*, 400 Md. at 682, 929 A.2d at 911. "When the question before the agency involves one of statutory interpretation" review is more expansive and the court "may substitute [its] judgment for that of the agency." *DLLR v. Muddiman*, 120 Md. App. 725, 734, 708 A.2d 47, 52 (1998). The court is not bound by the agency's statutory or legal conclusions. *Id.*

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Montgomery County, Md.

The goal of statutory construction “is to ascertain and effectuate the intent of the Legislature.” *Walzer v. Osborne*, 395 Md. 563, 571, 911 A.2d 427, 431 (2006) (citation omitted). The court first looks to the plain language of the statute and gives the language its natural and ordinary meaning. *Id.* The Legislature is “presumed to have meant what it said and said what it meant.” *Id.* at 572, 911 A.2d at 432 (citing *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002)). If this natural and ordinary meaning is clear and unambiguous, construction of the statute is at an end. *Id.* (citing *Chow v. State*, 393 Md. 431, 443-44, 903 A.2d 388, 395 (2006)).

The words are given effect as written if, “construed according to their common and everyday meaning, [they] are clear and unambiguous and express a plain meaning.” *Id.* (citing *Jones v. State*, 336 Md. 255, 261, 647 A.2d 1204, 1206-07 (1994)). This plain meaning “is controlled by the context in which it appears.” *Id.* at 573, 911 A.2d at 432-33 (citing *State v. Pagano*, 341 Md. 129, 133, 669 A.2d 1339, 1341 (1996)). As a part of the context, “related statutes or a statutory scheme that fairly bears on the fundamental issue of legal purpose or goal must also be considered.” *Id.* at 573, 911 A.2d at 433 (citing *Gordon Family P’ship v. Gar on Jer*, 348 Md. 129, 138, 702 A.2d 753, 757 (1997)).

An ambiguity exists when there are two or more reasonable alternative interpretations of the statute. *Id.* at 572-73, 911 A.2d at 432 (citing *Chow*, 392 Md. at 444, 903 A.2d at 395). However, the court will “neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words of the Legislature used or engaged in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.” *Id.* at 572, 911 A.2d at 432 (citing *Taylor v. Nations Bank, N.A.*, 365 Md. 166, 181, 776 A.2d 645, 654 (2001)). Further, the court is “required to read the rule so as to give effect and meaning to all of it, thus avoiding an

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Clerk of the Circuit Court
Montgomery County, Md.

interpretation that renders any part of the rule nugatory or meaningless.” *Blundon v. Taylor*, 364 Md. 1, 12, 770 A.2d 658, 664 (2001).

An agency’s interpretation is entitled to deference where it is a consistent and long-standing construction. *Marriott Emps. Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445, 697 A.2d 455, 459 (1997) (citation omitted). The weight given to an agency’s construction depends on several factors including the duration and consistency of the administrative practice and the extent to which the agency engaged in a process of reasoned elaboration in formulating its interpretation. *Id.* at 445-46, 697 A.2d at 459 (citations omitted). However, where the construction “conflicts with the unambiguous statutory language” the construction is not entitled to deference. *Id.* at 446, 697 A.2d at 459 (citing *Falik v. Prince George’s Hosp.*, 322 Md. 409, 416, 588 A.2d 324, 327 (1991)).

Analysis

The court’s analysis begins, and quickly ends, with the plain, unambiguous language of the zoning ordinance at issue in the context of the overlay zone. “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.”

Foremost, the court finds it cannot give the Board’s interpretation the deference it seeks. This interpretation has not been applied consistently over time. Rather, just the opposite. The Board’s current interpretation directly contradicts its own interpretation of the same section ten years earlier. Further weighing against deference is that the Board’s current interpretation conflicts with the unambiguous language of the zoning ordinance.

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Clerk of the Circuit Court
Montgomery County, Md.

The court finds that the language of the Zoning Ordinance, taken in context, is not open to two or more reasonable interpretations. The Board argues that “confront” has a special meaning in zoning parlance. Yet, this argument is not supported by the statutory scheme.

Section 59-A-2.1 of the Montgomery County Code specially assigns definitions to a wide variety of words. These definitions include common words that the Montgomery County Council intended to give a specific meaning (for example “Yard”, with separate definitions for “Yard, front”, “Yard, rear”, and “Yard, side”) and words more specialized to the zoning world (for example, “Frontage” and “Individual living unit (ILU)”). Nowhere in this expansive definition section is “confront” given a special meaning beyond its everyday use. Therefore, the court must apply its “common and everyday meaning.” *Walzer*, 395 Md. at 572, 911 A.2d at 432.

The Merriam-Webster Dictionary defines “confront” as:

- 1: to face especially in challenge: OPPOSE <*confront* an enemy>
- 2: a: to cause to meet: bring face-to-face <*confront* a reader with statistics>
b: to meet face-to-face: ENCOUNTER <*confronted* the possibility of failure>.

“confront.” Merriam-Webster Dictionary, 2014, available at <http://www.merriam-webster.com/dictionary/confront>. Newell Street runs perpendicular to the District of Columbia. Given the common meaning of “confront”, it is not possible for Newell Street to be “face to face” with any zone in the District of Columbia, residential or otherwise. Thus, an interpretation applying the qualifying phrase “that confronts a residential zone in the District of Columbia” to Newell Street would render the limitation meaningless in regards to Newell Street.

Therefore, the Board’s interpretation is not a reasonable alternative which would result in an ambiguity of the plain language of the statute. Rather, the record demonstrates that the Board impermissibly “engaged in forced or subtle interpretation in an attempt to” limit the reach of the zoning ordinance. *Walzer*, 395 Md. at 572, 911 A.2d at 432. The Board’s reasoning that

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Montgomery County, Md.

“confront” is “less than artful drafting” does not permit it to go beyond the plain language of the statute. The only reasonable interpretation of the Zoning Ordinance is to apply the height restriction to all of Newell Street.

The court’s unambiguous interpretation of the Zoning Ordinance is supported by the context of the property at issue. In the Overlay Zone, some length of Eastern Avenue confronts residential zones in the District of Columbia while some length of Eastern Avenue confronts non-residential zones in the District of Columbia. This makes the phrase necessary to qualify to which areas of Eastern Avenue the height restriction applies. In contrast, as already stated, no length of any portion of Newell Street confronts any zone in the District of Columbia. Applying the phrase to Newell Street would be superfluous.

Finally, the court’s unambiguous interpretation of the Zoning Ordinance is supported by the fact that this exact interpretation was applied by the Board ten years ago when they first had occasion to fully consider this statute. It is worth noting that businesses and the public have developed and purchased property in the Overlay Zone in at least constructive, if not actual, reliance on the Board’s interpretation of this ordinance over the previous ten years. The court views the Board’s decision to change its mind because, as the Developer argues, the property was “underutilized” to be unequitable to those who engaged in these previous transactions precisely because of the height limitations Respondents previously applied to the property. Of course, the Montgomery County Council is always permitted to amend or change the language of the Zoning Ordinance through the proper procedure. As currently written, however, the height restriction ordinance unambiguously applies along Newell Street.

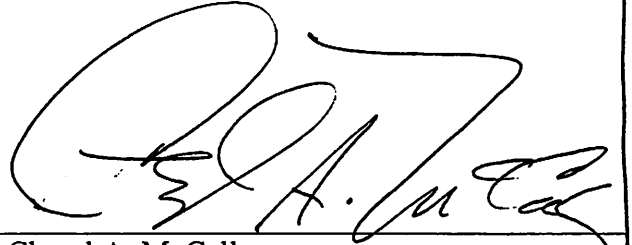
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Clerk of the Circuit Court
Montgomery County, Md.

Conclusion

For the reasons stated above, the decision in Resolution No. 13-74 of the Montgomery County Planning Board is hereby **VACATED**. Further, this matter is **REMANDED** to the Montgomery County Planning Board for further proceedings consistent with this opinion. An appropriate order follows this opinion.



Cheryl A. McCally
Judge, Circuit Court for
Montgomery County, Maryland

ENTERED

FEB 21 2014
Clerk of the Circuit Court
Montgomery County, Md.

From: [Karen Cordry](#)
To: [MC-Development](#); [Meredith Wellington](#); [Alan Bowser](#)
Cc: [Elizabeth Joyce](#); [Cheryl Gannon](#); [Jamison Adcock](#); [Jerry Garson](#); [Peggy Dennis](#); [Jay Elvove](#); [Brenda Freeman](#); [Jacquie Bokow](#); [Daniel Meijer](#); [Kimbllyn Persaud](#)
Subject: Re: MC Civic Federation - Comments on Development Policies and Practices
Date: Tuesday, August 1, 2023 12:02:02 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

And I was cleaning out my files and ran across a bunch of pamphlets done by the People's Counsel in its earlier incarnation! They looked good!

Karen Cordry

On Tuesday, August 1, 2023 at 11:46:34 AM EDT, Alan Bowser <alan.bowser@gmail.com> wrote:

Montgomery County Civic Federation, Inc Comments on Montgomery County Development Policies and Practices

The Montgomery County Civic Federation Inc. is pleased to comment on the ongoing review of County development policies and practices by the Montgomery County Development Review Process Workgroup.

Members of the Montgomery County Civic Federation, Inc. believe very strongly in transparency, accountability and efficiency when it comes to our public institutions, and especially the Montgomery County Government and the Maryland-National Capital Park and Planning Commission. In our work, we will continue to advocate for more attention and additional resources directed to improving these emphases at all levels of government.

There are several areas of concern that we want to highlight in this note.

Planning Board - Agendas - Public Participation. We have a longstanding concern about the integrity of Planning Board agendas. Oftentimes, these agendas have not been timely available to the public, and agenda items have been included or removed without adequate public notice. We believe that the public needs to be properly and timely informed about the schedule and items to be considered at M-NCPPC Board meetings and other meetings. We further believe that there should be sanctions if

there are changes in agendas without public notification. As always, we believe that all of these meetings should be open to the public and, to the extent possible, recorded by audio and visual means and made available to the public as soon as possible. Greater public participation is essential for greater racial equity and social justice in development planning and project implementation.

Planning, Transportation & Environment expertise in the Executive. As we understand the process, having redundant transportation and environmental expertise in the Montgomery County Government and the Planning Department seems to be unnecessary, expensive and inefficient—causing delays in the project application and review process. We believe that these key functions should be the responsibility of the Executive Branch, which has the ultimate responsibility for implementing transportation and environmental projects.

Pre-application community meetings. We think it would be an improvement to the development review process in the County if pre-application community meetings were organized by the Montgomery County Planning Department, rather than by the applicant. The Planning Department has expertise and outreach capacities in this area that are greater than that of project applicants.

The Bi-County Planning Organization. M-NCPPC is nearly one hundred years old, and needs to be reevaluated in terms of its costs and continuing efficiency. There seems to be little need in 2023 for a bi-county development planning and parks agency when those functions can be handled more appropriately and efficiently under the executive branch of County government. Created by the State Government as a bi-county organization in the early 20th century, M-NCPPC and its constituent parts are subject to little supervision and accountability. Ethics violations, for example, are generally handled internally, and are not subject to the authority of the Maryland Attorney General. The General Assembly has rarely considered issues related to the Commission, and complaints about its activities and decisions are not regularly taken up by higher authorities. We support the establishment of a State-level task force to study the structure of M-NCPPC in 2023 to make recommendations about its structure, costs, efficiencies and accountability. As an example, we think that there is merit in moving the planners to the County Government. There

is the need to assess the continuing viability and overall fairness of a state agency handling development approvals, while separate County agencies are responsible for implementation.

Office of the People's Counsel. The Montgomery County Civic Federation strongly supports a Montgomery County Office of the People's Counsel, a County government-funded office that can provide advocacy and valuable information to Montgomery County residents about development processes and projects in the County. Funding the OPC has been the highest priority of the MCCF in recent years, and we have been pleased to have the support of the Montgomery County Executive and many County residents in this regard. Many members of the Montgomery County Council have also expressed support for this agency, and we hope to see this office funded through an upcoming supplemental budget request or in next year's Operating Budget. We believe that OPC can be and will be an important actor in strengthening the County's development policies and practices as it will facilitate greater knowledge of and participation of residents throughout the County in planning and development. Despite its importance, however, some members of the Council Council have strongly opposed the OPC and recently considered a bill to remove it from the county code. If this opposition continues, we hope that our State Delegation would establish such an office for the benefit of Montgomery County residents.

Thank you for the opportunity to comment on this ongoing review.

Alan Bowser, President
Montgomery County Civic Federation, Inc.
July 31, 2023

From: [Patricia Johnson](#)
To: [MC-Development](#); [Wellington, Meredith](#)
Subject: about the development review process workgroup
Date: Tuesday, August 1, 2023 3:26:37 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Lopez and the Development Review Process Workgroup: I attended the open meeting on July 18th to listen to testimony. I wanted to add my comments for the record for review before you make your final decisions in October. I have been active within my own Kenwood Citizens Association and the Citizens Coordinating Committee on Friendship Heights where I am on the Executive Board. We have participated in discussions about Thrive Montgomery, the Westbard Sector Plan and the latest: the Little Falls Parkway Road Diet. In all of these projects over the last 15 years, there has been a common thread: **a lack of transparency, lack of process and a failure to listen to those that live and work in areas that Parks and Planning target for development.** Our unelected officials must actually listen to citizens and be accountable for the decisions they make. They operate with impunity. The most recent incident of “tone deafness” is the continual changing and constrictions done to a mere 4/10th of a mile on Little Falls Parkway between Arlington Road and Dorset Avenue. Citizens, who at last count, total over 4,452 have opposed the narrowing of the Parkway from four lanes to two. The reasoning behind these costly and time consuming “fixes” to this small stretch of parkway was in order to form a “linear park” with ping pong tables and corn hole games. It was deemed to be “unlike any other park in the United States”. **The author, Mike Riley (Director of Parks), was after a National Award before he retired, and this was his golden goose.** When the County Council voted to withhold funding for the linear park, the reasoning for the two narrowed lanes squeezed to one side became safety. However, the Parkway when it was open to 4 lanes (2 in each direction) had a perfect safety record before changes were made. Also, when Parks was asked for an accounting of how much this was costing the taxpayer, no fiscal documentation was ever provided. Citizens also questioned the need for more amenities in an area that was overflowing with parkland. The Racial Equity Social Justice issue was raised as to why the Parks Department needed to pour more money into this particular location where it was neither needed or asked for. There was no transparency, no discussion and citizens were being told what was best for them even though there are so many parts of the county that are in need of green space and amenities. The area that Parks has focussed on, with unwavering attention, already has an embarrassment of riches. Why did the testimony given on March 30th by over 45 people that were overwhelmingly opposed (71%) to these tortured changes to a small section of Parkway fall on deaf ears? The Planning Board passed Parks’ request by 4 in favor with 1 abstention. Then on May 8th, the CC stopped the funding for the park after 1200 letters against the linear park arrived in mailboxes in less than 48 hours. This is but one example of the obdurate insistence by unelected officials that are not accountable to anyone. They have the power to decide what they think is best for established communities no matter what those communities want or say. In fact many of the officials that are the source of these plans and ideas don’t actually live in Montgomery County. The Parks Department has many employees in senior decision making positions that live in the District and as far away as Pennsylvania. How can that be a representative body that guides development for those citizens that actually live in Montgomery County? It doesn’t make sense and the existing Planning Board and Parks Department exhibit the lack of transparency and lack of democratic process that is vital to our

county. Unelected officials cannot and may not operate with impunity. Sincerely, Patricia D. Johnson, 5301 Oakland Road, Chevy Chase, Md. 20815 (3019225382)

As many of you are aware, the residents on Knowles Ave and subsequent neighborhood have had significant issues with flooding and stormwater mismanagement. With many public hearings the residents disclosed their concerns, and it was dismissed as lack of public knowledge in regards to our system. It was only after several attempts to bring this to the attention of the county that residents decided to act, and started pulling manhole covers themselves to investigate why we were flooding.

It was found by the residents that the County had drastically inaccurate information it was approving permits off of, and distributing to the public as in-ground infrastructure. It was also discovered that the storm water was going through a line the county said no water was going through. This line was a “private 24 inch stormwater line for residents only” as was described by officials. All the huge major projects near Knowles Ave and Summit Ave in Kensington are actually finding their way through this private line. The newest project on the NE side of Knowles and Summit will also find its way to this line as well. Residents are unsure why it is being allowed to move forward, disregarding this new information. In fact, the public had to bring several State Delegates out to prove what we were being told was wrong. The residents would appreciate county officials working on their behalf, checking infrastructure plans and measurements before permitting.

The builders had to make changes to their plans; only after it was found that their drawings were inaccurate by the public. This re-examination would have never been allowed to be brought up if it wasn't for them changing the use of the new structure and needing re-submittal, as it was already passed even with the public concerns.

The question our neighbors are asking is— How was it passed in the first place, and why were we the ones to find the inaccuracies in the drawings? How is it being allowed to be passed again, when the stormwater will knowingly pass through a private stormwater line?

We were told by stormwater management that they sent their own engineers out and there was the capacity after we successfully lobbied for a denial in the

builder's initial stormwater management concept a few years back, yet it was allowed to be approved, even with the county survey.

Now similar projects are going through the approval process with the accurate stormwater drawings and changes in scope. It seems that the county is only looking at how the project can get past approval in the immediate area, and not where this water will be flowing and affecting the neighborhood downstream.

Simply put, our water management system is grossly undersized for our area. It had plans drawn up in the 70's that the County has been referring too as in-ground infrastructure, but it was never built. We are 50 years past the "known" need for it. And still the county is approving projects into this system, knowingly, that will run not just inadequate lines... but also through lines they previously deemed as privately owned, on private land (not easements). Residents are only asking for proper concern when permits are considered.

If there is a question of the integrity of the county referring to these lines as in-ground (the ones that were never built) I refer you to the engineering report the HOC paid for that labeled them as getting the inaccurate information from the County. This same Engineering report deems our system very inadequate for the new projects being built upstream. This was an HOC contracted engineering company, paid for with tax dollars.

Which leads me to the reasoning for this report, a history of a permitting and approval process not taking community needs into consideration at the start. A few years ago, the HOC added an un-permitted 9000 sq ft asphalt parking lot to their property. The HOC put in the lot over community Green Space without the approval of the County. This sparked backlash with the neighborhood and forced them to petition to get it removed (with the backing of State Delegates). The TOK Mayor offered a temporary permit to keep the lot and asked the CE to defer enforcement to remove for a few years. DPS and the planning dept finally got the HOC to relent and remove it.

In addition to the above; the neighborhood experienced more flooding, this became a focal point for the neighborhood, and it was uncovered from residents that this parking lot was flowing through the same 24" private line previously thought of as having no water running through it. It was only after many meetings with HOC officials and on ground walkthroughs with their engineers, (with the

public) that it was finally deemed needed to be removed with the coordinated efforts of the neighborhood looking to convert back to greenspace. .

The residents on Knowles and neighbors have had constant challenges with the County in many regards. We have had to constantly voice our concerns and do “in-depth” research to prove our concerns accurate. A big challenge is that our area doesn’t have a funded Public Council to help to assist with complicated Land issues. The neighborhood was forced to do things like bring State Delegates out to view water drops into drains to prove what we were being told by the county was not accurate. Couple that with the fact that residents on Knowles are on a State numbered Road—East of Summit on Knowles is the TOK, west of Summit on Knowles is still Kensington, but it is MoCo Kensington— It amounts to a public nightmare to try to navigate. This was even voiced by County stormwater officials in meetings as it being complicated for them to navigate with all the variables involved. We have done our best; but ultimately if it wasn’t for State level lawmaker people, none of our concerns would have been able to be proved and voiced. We believe that the community should be a focal part of permitting and process improvement, not how our current relationship has been.

The residents in our neighborhood are facing yet another challenge. That being the Bike Master Plan. In the eyes of many residents the plan was put together in a very Un-Democratic method for our area. How can the County formulate a Master Bike Plan with only asking input from the groups they invite to give opinions of where the path should be placed? We are being told we can give input into it now, however the side of the street, what type of path and how it will run has already been planned. Planned to so much detail that the new buildings along Knowles had to incorporate the Bike Master Plan into their designs of the structures for approval from the County.

When residents voice concerns and try to point out that the County was going against the plans approved by the Bike Master Plan group; we were met with objection. We can point directly to the Final responses from the Planning board labeled “ final responses to public testimony 2018/04 work session 6 “ line 337, as an example to back up our concerns. That line clearly states the county was wrong with the direction they put on the Master Bike Plan, (there is no West) and that the direction the path should be on is North. But the County put the path on the

South side. In other areas if there are disparages, it is was labeled in the Notes section of the same document. The public was led to believe the County meant “west-bound” and “Noth Side” was the same as had been discussed. This dissolves the trust placed in the county officials as the details and communication are contradictory and hard to clarify.

As planned, the bike path will displace lots of everyday life, with what seems to be little to no consideration for the best outcome of overall taxpayers. From moving telephone lines, removing parking pads, to increasing traffic, it seems that the county is planning for changes without ever even experiencing life in our area.

What a majority of our concerns boils down to is - the neighborhood near Knowles and Summit needs help. Many years we have been voicing our concerns to have them fall on deaf ears, only to have those deaf ears find what we were saying was accurate after the projects were completed. Now many officials are agreeing with our findings, but going against the accuracy and their own recommendations in permitting. We simply would like a resident first approach to the permitting process, really understanding what the main concerns for everyday life are as our community grows.

***Written testimony received 08/01/2023
Judith Hutchison**

From: [William Maggard](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Subject: Development Review Process
Date: Wednesday, August 2, 2023 5:07:31 PM
Attachments: [image071904.png](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

On June 22, 2023, Experience Senior Living (ESL) received the Planning Board's unanimous approval of the site plan for the Reserve at Strathmore Square, a senior living community consisting of 259 units in 29 floors with a gross building area of approximately 357,000 square feet (the "Reserve"). ESL is part of the NexCore Group of companies, one of the most prolific developers of healthcare real estate in the U.S. This real estate development activity enables ESL and NexCore Group to engage with numerous AHJs nationwide concerning planning and entitlement processes. As the leader of the company's effort to obtain entitlement approvals I am qualified to comment on how our experience with Montgomery County's process compares with our experience at other AHJs. The Planning staff exceeded ESL's expectations at every step in the process.

The Reserve is part of Strathmore Square, a multi-building master planned project by Fivesquares Development on WMATA's property at the Grosvener-Strathmore Metro station. The County planning staff is extremely familiar with the Strathmore Square development, which began its planning process nearly a decade ago. ESL realizes it benefitted from that previous heavy lifting done by Fivesquares and the County Planning Department. ESL also received excellent guidance from a team of consultants with experience at the County and with Strathmore Square. Though much was accomplished prior to ESL's application, the Reserve is a large, complex development on a very tight site. Furthermore, ESL had extremely ambitious schedule objectives that included our first submittal of the site plan application on January 21, 2023 and a plan to begin site work in December of 2023. The Planning staff has placed ESL in a position to realize those schedule objectives.

Real estate development is fraught with financial risk. Developers seek to mitigate risk as they chart a path to predictable project outcomes. ESL has worked with several AHJs that create such unpredictability that our investments in those communities have suffered greatly. My overarching advice to an AHJ seeking to maintain regional competitiveness in connection with its development review process is to foster predictability and speed-to-market. As described below, ESL believes that the County does well in promoting that predictability.

ESL is most impressed by the following attributes of the staff members with whom we engaged:

- Availability/advocacy/advice of senior MNCPPC leadership on how to achieve ESL's schedule objectives
- Availability of staff to answer questions and arrive at solutions
- Thoughtful recommendations on building and site design
- Pragmatic solutions to resolving staff comments, appropriately balancing developer concerns
- Quick decisions

-Bill Maggard



William Maggard | Senior Vice President, Real Estate Development

O: 303.244.0710

M: 303.621.4936

Email: BillM@ESL5280.com

My experience is as a current resident of Kensington Estates. As Kensington is developed, I'd like the county to take community feedback and impacts into more consideration when reviewing development. The area of Kensington near Knowles Ave and Summit is already one of the worst intersections in Montgomery County and suffers from minor to severe flooding nearly every time it rains, most notably from water management line overflows and reduction of greenspace.

Throughout my time in Montgomery County, I have found it very time consuming to follow the review process and steps for involvement. I recently followed the process correctly and testified asking for clarifications to approvals and found the county to not address questions of the review. For example, the Flats development was most notably approved with a traffic study done during December 2020 with no school, covid, and the holiday season, as well as improper stormwater management measurements (residents had to actually measure these pipes themselves and directly asking delegates to get involved) and using the 2016-2020 subdivision strategy policy when the 2020-2024 plan was approved a full week before the submission of the preliminary plan. In my career of federal service, these errors would nullify the agreements and force new proposals. Here, I have yet to even be explained to why they can continue development under what seems to be improper criteria for evaluation.

I've also been following the other development on the Knowles and Summit corner, 10500 Summit Ave. Notices don't get sent too far from the site, and until recently notifications have been going to deceased civic association members. In addition, the pre-submittal community meetings had incorrect dates and days posted on signage. At this meeting, the developer's selling point to the community was that the development wouldn't make things better but wouldn't make it worse! I hope the county can improve the review process by helping to reach more residents in the impacted community directly and early, making written communications clear and concise, and including all current policy and infrastructure metrics before review to ensure developments improve existing issues.

A lot of the written communication around development from Montgomery County is centered around connecting corridors for public transit, denser housing, and protecting the environment. In my experience from my neighborhood development, the plans always come to review showing this...but in practice they are not met. The review process is considering metro lines to be equal to MARC trains, and sketches that include large greenspaces and trees which have not been built to plan, as one can see with the current finished townhomes on Knowles and Summit in comparison to the approved drawing.

There are also several different interpretations of the master plan for new pedestrian paths around the area. Over the years, county officials and documents have contradicted each other on where pedestrian paths will be placed and to what extent. In fact, a lot of those creating the plans have admitted to never biking or being around the areas they are planning for. I bike as a form of transportation regularly and I hope that the review process for infrastructure improvements can include those that will use the improvement or live within the area.

In summary, my experience with the development review process in my neighborhood has left me with the feeling that developers come first. I would love if the county made more of an effort to meet with impacted communities and understand concerns and desires for life, well before plans for development are under review and to confirm details and logic of analysis as details arise.

A suggestion for improvement would be to do more of the meetings like the BPPA public input presentation on June 1. Here leaders listened to our concerns and suggestions on bettering the process and how the analysis takes place. For example, the analysis predicting pedestrian comfort by lane count didn't take into consideration the lack of a shoulder. Leaders acknowledged this and asked for feedback. I think development review process could use more community meetings like this that listened to the community input in a hands-on informal way.

In comparison to my interaction with other counties in Ohio and Texas. I think that Montgomery County has more ways to connect with community but it's more confusing as a resident to navigate and it's too late in the process. Also, it seems that other counties focus more on the infrastructure for development in the beginning phases of review. Thank you for your time.

**Received from:
Ryan Hall**

Wed 8/2/2023 6:48 PM

From: [Aakash Thakkar](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Cc: [McLean Quinn](#); [Evan Goldman](#); [Jack Lester](#)
Subject: EYA Feedback for MNCPPC
Date: Wednesday, August 2, 2023 11:59:58 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear MNCPPC,

EYA is pleased to share the following feedback with MNCPPC.

MNCPPC has been a regional leader in promoting, supporting, and approving strategic plans and projects that address housing - market and affordable - demand and the ever evolving land use landscape expressly because it is apolitical. It can make decisions that benefit the long-term growth, prosperity, and equity in the County without fear of political retribution.

As such, the Planning department should remain an independent (non-politically controlled) agency—separate from the County Executive’s departments like DEP, MC-DOT, etc.

In terms of additional feedback, we have been fortunate to work successfully with MNCPPC on many projects. Staff is highly capable and cooperative and the process is clear.

One area of potential improvement is the timeline to secure Preliminary Plan, Site Plan, and Record Plat. Given the need for housing and tax base for the County, we suggest a potential reduction in the timeline to achieve each of those milestones by 3-4 months, thereby reducing the overall development timeline by 9-12 months. We look to discuss this in further detail.

We appreciate the opportunity to share these thoughts and look forward to our continued collaboration.

Best,

Aakash

aakash thakkar
chief acquisitions officer, EYA
202-427-4066

From: [Jamison Adcock](#)
To: [MC-Development](#); meredith.wellington@montgomerycountymd.gov
Subject: Montgomery County's Development Review Process
Date: Thursday, August 3, 2023 1:25:13 AM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Esteemed Members of the Development Review Process Workgroup,

As you examine the county's current development review process, I would like to ask that you take a few things into consideration that may fall a little outside the actual task of reviewing processes. I agree wholeheartedly that there is much room for improvement on that account, but I would like to raise a separate (but related) matter, which is: What happens when the rules, procedures, precedents, and even laws are bent, or even outright broken?

This is not an academic question. To wit, the previous Planning Board Chair, Casey Anderson, repeatedly violated the Open Meetings Act and abused the consent calendar, and there were lobbyists buzzing around the Planning Board and County Council who failed to register as required by Maryland Law. In addition, I think we all know about the fully-stocked bar that Mr. Anderson had in his office, which not only raised all sorts of questions (and eyebrows), but was the kind of thing that would have gotten just about anyone else fired from their job.

None of that resulted in any meaningful consequences.

The County Council did finally fire the entire Planning Board (including commissioners who apparently were not responsible for the chaos), and then raced to fill the positions with temporary commissioners, in a manner that did not comport with Maryland law. The process was so rushed and shoddy that one of the finalists wasn't even a Maryland resident, and another had a social media account that was littered with bizarre conspiracy theories and other nuttiness.

Worse, the Council violated the law and even their own precedents when they seated three new commissioners on the Planning Board before the County Executive had given either his approval or disapproval. As is clear from the OAG's subsequent opinion, that was a violation of Maryland law.

None of that resulted in any meaningful consequences.

I imagine you are all well aware of these facts, and you can no doubt appreciate the stink that sort of bad behavior leaves in the noses of ordinary residents, who already believe that the system doesn't really work for them. Indeed, many people are understandably grossed out by local politics, which in turn causes them to tune out, and that only makes matters worse.

That jaded resignation, paired with the lack of any real local journalism, only encourages those who will bend or break rules and procedures as they see fit. The antidote is to have enforcement with some teeth. I would suggest the following principles:

1. Violations of state law should have meaningful consequences, otherwise those violations will keep on happening.
2. No organization should ever be trusted to investigate itself. Integrity and independence are key.
3. People serving on a board (e.g., the Planning Board) should not be able to make campaign contributions to those who are empowered with overseeing their work. That is problematic for obvious reasons.
4. Too much power is concentrated in the hands of the County Council, and that needs to be rebalanced, shrill cries of "Power grab!!" notwithstanding.
5. Ordinary residents, who ultimately have to deal with the impacts of decisions made about their communities, *need* to be informed & involved, and not simply shut out. After all, they - well, we - are the best possible check and balance.

I thank you for your attention to these issues, and I look forward to seeing how your work proceeds. And please don't hesitate to reach out to me with any comments or questions you may have.

sincerely,
-Jamison Adcock



Conservation Montgomery

TESTIMONY For Development Review Process Workgroup

On the Need to Improve Organizational Structure for the Development Review Process and Planning Department

August 1, 2023

When looking at how to improve the development review process it is critical to not just look at how the process works, but also look at the organizational structure of who is charged with carrying out the process.

The organizational structure and decision-making power at Montgomery County Park and Planning has evolved over the past 15 years to become more concentrated, and at times, unchecked. There is a need for a more balanced, specialized, holistic, and inclusive approach to the development review process, master planning process, and general decision making within the Planning Department, especially with regards to planning for environmental resilience.

There is a clear need for a new (reinstated) position – Chief of Environmental Planning.

It is helpful to have some historical context. In 2008 the Planning Department's budget was cut and Roland Stanley reorganized the agency into the current 3 sections by regions (Downcounty Planning Chief, Mid-County Planning Chief, Upcounty Planning Chief). This restructuring essentially eliminated the position of Chief of the Environmental Planning Division and the independent Environmental Planning Division. In doing so, environmental specialists and staff became subset to Section Chiefs.

Since this time, the need for the County and Planning Department to focus on the wide range of environmental impacts associated with planning and development has increased. Planning must be proactive, progressive, comprehensive, and coordinated in order to meet the County's Climate Action Plan (CAP) goals as well as the goals laid out in Thrive 2050. In particular the CAP contains many specific action items that are directly related to, and require incorporation into, the development review process:

"Thrive Montgomery 2050 was drafted in coordination with the county's Climate Action Plan (CAP). While Thrive Montgomery 2050 is a high-level land use document that focuses on long-range planning and policies to guide the physical development of the county, the CAP recommends specific near-term actions to achieve the goal of eliminating greenhouse gas emissions by 2035, and to mitigate or adapt to the effects of increased heat and flooding, high winds, and drought... The Montgomery County Planning Department (Montgomery Planning) and Montgomery Parks also will implement recommendations in the CAP that are within the scope of

the M-NCPPC's responsibilities." (Thrive 2050, p. 19) See below for examples of CAP recommendations that require action by M-NCPPC / Park and Planning.

A new Environmental Planning Chief should be on the same organizational level as the Section Chiefs and should be able to participate in regulatory review, have the power and authority to uphold the professional staff's environmental recommendations, and help oversee environmental master plans and the implementation of the CAP action items that pertain to development review.

We appreciate your consideration of our position and look forward to hearing from you on this important issue.

Caren Madsen
Chair, Board of Directors
Conservation Montgomery

Caroline Taylor
Executive Director
Montgomery Countryside Alliance, a Conservation Montgomery Partner



MONTGOMERY COUNTY PLANNING DEPARTMENT

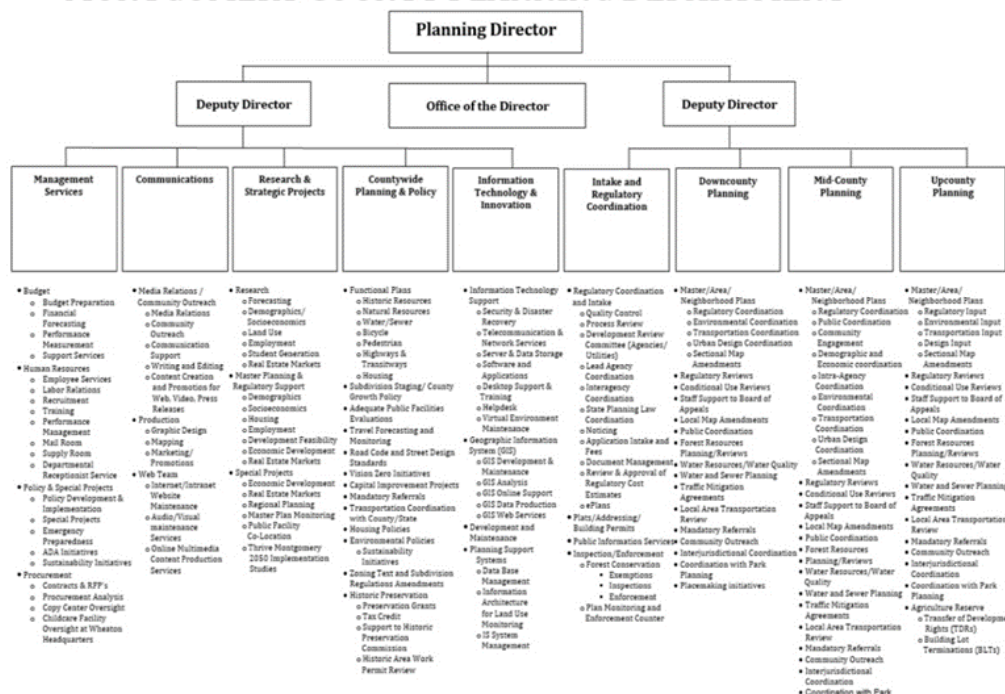


Table 14: CAP carbon sequestration actions

Action	GHG Reduction*	Climate Risk Reduction	Racial Equity & Social Justice	Public Health	Environmental Stewardship	Economic Prosperity	Authority	County Investment	Private Investment	Lead	Contributors
S-1: Retain and Increase Forests	Level TBD	Extreme Precipitation	+	++	++	+	County with Change	\$	\$	M-NCPPC	DEP, DPS
S-2: Retain and Increase Tree Canopy	Level TBD	Extreme Heat	+	++	++	++	County with Change	\$	\$	DEP, M-NCPPC	MCDOT
S-3: Restore and Enhance Meadows and Wetlands	Level TBD	Extreme Precipitation	+	++	++	++	County with Change	\$	\$	M-NCPPC	DEP
S-4: Regenerative Agriculture	Level TBD	High Winds	Neutral	+	+	Neutral	County with Change	\$	\$	OAG, M-NCPPC	DEP, MCGB
S-5: Restore Soil Fertility, Microbial Activity, and Moisture-Holding Capacity	Level TBD	Extreme Precipitation	Neutral	+	++	Neutral	County with Change	\$	\$	DEP	M-NCPPC, DHCA, OAG
S-6: Whole-System Carbon Management and Planning	Level TBD	Extreme Precipitation	Neutral	Neutral	Neutral	Neutral	County	\$	\$	DEP, M-NCPPC	OMB (CountyStat), DOF, WorkSource Montgomery

* While carbon sequestration actions will reduce County greenhouse gas (GHG) emissions, the level of emissions reduction is to be determined (TBD) and cannot be estimated without further study.

Table 15: CAP climate adaptation actions

Action	Climate Risk Reduction	Racial Equity & Social Justice	Public Health	Environmental Stewardship	Economic Prosperity	Authority	County Investment	Private Investment	Lead	Contributors
A-1: Water Infrastructure Resilience	Extreme Precipitation	+	++	+	Neutral	Outside County	\$	\$	WSSC Water	DEP, municipalities, DC Water
A-2: Repair and Enhancement of Stormwater Conveyance Systems	Extreme Precipitation	+	+	+	Neutral	County	\$	\$	MCDOT	DPS, M-NCPPC
A-3: Temperature Monitoring and Alerts	Extreme Heat	++	+	Neutral	Neutral	County with Change	\$	\$	OEMHS	HHS
A-4: Extreme Weather Energy Efficiency Building Code	Extreme Heat	+	+	Neutral	Neutral	County with Change	\$	\$	DPS	DHCA, MCGB
A-5: Climate-Adapted Housing Incentives/Subsidies	Extreme Heat	+	++	Neutral	+	County with Change	\$	\$	DHCA, DEP	MCGB, DPS
A-6: Green/Cool/PV Roof and Pavement Code	Extreme Heat	-	++	+	++	County with Change	\$	\$	DPS	DHCA, MCGB
A-7: Green Public Spaces	Extreme Precipitation	Neutral	+	++	Neutral	County with Change	\$	\$	DEP, MCDOT	DPS, M-NCPPC
A-8: Harden Emergency Shelters and Install Resilience Hubs	Extreme Heat	++	++	Neutral	Neutral	Outside County	\$	\$	HHS	DGS, OEMHS, MCPS, FRS, DPS
A-9: Mold Protection and Remediation	Extreme Precipitation	++	++	Neutral	+	County with Change	\$	\$	DHCA, DPS	DEP, MCGB
A-10: Green Infrastructure	Extreme Precipitation	Neutral	+	++	Neutral	County with Change	\$	\$	DPS, DEP	MCDOT, M-NCPPC
A-11: Climate Adapted Development Standards	Extreme Precipitation	+	+	Neutral	Neutral	County with Change	\$	\$	DPS	DGS, DEP
A-12: Stormwater Retention Credit Trading	Extreme Precipitation	Neutral	+	+	Neutral	County with Change	\$	\$	DEP	M-NCPPC, DPS
A-13: Ban Stormwater Management Requirement Waivers	Extreme Precipitation	Neutral	+	+	-	County with Change	\$	\$	DPS	M-NCPPC, DEP
A-14: Update Floodplain Maps	Extreme Precipitation	Neutral	Neutral	Neutral	Neutral	County with Change	\$	\$	DPS, OEMHS	M-NCPPC
A-15: Water Supply Protection	Drought	+	++	++	Neutral	County with Change	\$	\$	DEP, WSSC Water, M-NCPPC	Municipalities
A-16: Flood Rescue Resources	Extreme Precipitation	+	+	Neutral	+	County	\$	\$	FRS, MCPD, MCDOT	DGS, OEMHS, PIO, municipal police departments
A-17: On-Site Water Reuse	Drought	+	Neutral	+	Neutral	Outside County	\$	\$	DPS, WSSC Water	Municipalities
A-18: Expanded Community Gardens	Drought	+	++	+	+	County with Change	\$	\$	M-NCPPC	MCPS, OAG, HHS
A-19: Advocacy for Off-River Water Storage	N/A	Neutral	Neutral	Neutral	Neutral	Outside County	\$	\$	DEP, WSSC Water	OIR
A-20: Study Potential for Buildings in the County to Flood and Possible Remedies	N/A	Neutral	Neutral	Neutral	Neutral	County	\$	\$	DEP, OEMHS	DPS

Testimony of Steven A Robins
Before the Development Review Process Workgroup
August 2, 2023

Good evening Chair Lopez and Members of the Committee:

My name is Steven Robins and I am a land use, zoning and real estate attorney at the law firm of Lerch Early & Brewer in Bethesda. I am testifying before you as an individual. Our Land Use Group will be submitting separate comments for the Committee's consideration. I have been practicing land use law predominantly in Montgomery County since 1986 and have worked on many development projects here in the County. As a result, I have firsthand experience working with the Maryland-National Capital Park & Planning Commission, the Montgomery County Department of Permitting Services, the Montgomery County Department of Environmental Protection, the Montgomery County Department of Transportation and many other County and State agencies associated with the Development Review Process. For years, I, along with others, have advocated for a streamlined development process and appreciate the efforts of all involved to help make this happen. Of course, there still are things that need to be accomplished to make the process smoother and more responsive to the needs of all stakeholders. I applaud your Committee's goal to make certain that Montgomery County is economically competitive in the region.

I, along with others you have heard from, continue to support the independent functioning of M-NCPPC. There does not appear to be any circumstances that would require a reorganization of the agency or a change in the authorization structure. The independent nature of M-NCCPC is a good thing that works well and does not need to be fixed.

There continues to be some issues with agency coordination since most development applications need to be reviewed by M-NCPPC, MCDOT, SHA, DPS, WSSC, Fire and Rescue and possibly DEP. These issues generally involve receiving conflicting requirements which is left to the Applicant to sort out as well as the timeliness of receiving comments. Committing to improving timely reviews, establishing a process for resolving conflicts, and addressing overlapping roles and authority would be welcome.

Over the past year, M-NCPPC has worked to improve its DRC process. DRC meetings are more meaningful and helpful. An area that continues to be problematic is the case intake process. It is taking too long for applications to be accepted for review (*i.e.*, months) and this really creates issues for applicants. This could be addressed by imposing time limits on the intake process and by limiting the review to making sure an application is complete rather than substantive comments about the application itself. I credit the intake division for beginning to address these concerns but there is more to accomplish to make this more process efficient and less burdensome.

Two areas that have long been discussed and, while admittedly have improved, are the Site Plan Certification process and Record Plat process. Certifying a site plan can take 3-4 months which is just too long. There should be a time frame set to complete such a certification that is administrative in nature. Regarding Plats, it can take 6 months to obtain Plat recordation and this simply is too long. One suggestion is to delegate responsibility for plat review and approval to MNCPPC, instead of multiple agencies. Also, there are many post development activities that are tied to Plat recordation. Time delays significantly impact development schedules.

Traffic Mitigation Agreements/Plans that are required to be reviewed and approved by M-MNCPPC and MCDOT also are taking too long. There should be a time period set for such review once the document is submitted to the agencies. This is an issue that needs to be addressed.

Strong consideration should be given to providing the Planning Director at M-MNCPPC with greater authority to approve certain plans and administrative amendments. The Director is fully capable of undertaking this responsibility, the end result of which would be to reduce unnecessary Staff and Board time on matters that appropriately could be delegated to the Director.

We are very fortunate in our County to have competent and committed Technical Staff at M-MNCPPC (as well as the Planning Board) and the County agencies as part of the process. There certainly are improvements that can and should be made while leaving the existing administrative framework in place.

Thank you very much for the opportunity to comment.

August 4, 2023

By Electronic Mail
development@montgomeryplanning.org

Delegate Lesley J. Lopez
and Members of the Development Review Process Workgroup
Montgomery County
Planning Department
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

RE: Comments for Consideration by the Development Review Process Workgroup

Dear Delegate Lopez and Members of the Development Review Process Workgroup,

This letter is submitted on behalf of Lerch, Early & Brewer's land use practice group regarding Montgomery County's development review process, with a special focus on finding opportunities to improve the County's economic competitiveness. Our group represents a significant number of property owners, home builders, hospitals, biotech companies, private schools, senior housing providers, and many other businesses as clients in the County who have participated in the County's land use processes over the years. Our practice group is comprised of eleven attorneys with over two hundred years of experience, collectively, in addressing land use issues in the County. We have participated in many efforts to improve the County's development review processes and welcome this opportunity to do so again.

Members of our group have monitored the three listening sessions hosted by the Development Review Process Workgroup and participated directly in the August 2, 2023 session. We are generally supportive of the productive comments you have received by people who engage frequently in the development review process, including our colleagues at Miles and Stockbridge and NAIOP, and hope that their suggestions may be implemented. Our comments in this letter are intended to supplement the comments you have already received and to emphasize the improvements that we believe are most needed, with the understanding that any improvements that make the process more predictable and timely will further the County's economic competitiveness in the region.

General Comments

To be clear, our group does not believe any current circumstances require a reorganization of the Planning Board or a change in its authorization structure. The history of the organization as a professional and independent review agency speaks for itself. At the same time, there is room for better cooperation among the departments/agencies who play a role in the review process and possibly a more specific allocation of responsibilities. At a minimum, there could be a more

effective process for resolving inter-agency conflicts. None of this, however, requires any change in state law, including the Regional District Act.

Overall, we believe that the various agencies have to appreciate the conflict developers have in attempting to keep housing costs as low as possible while addressing ever-increasing demands on new development, including off-site infrastructure improvements, impervious cover limits, increasing forest conservation requirements, and other exactions. The cumulative effect of these cost demands must be understood and appreciated by the reviewing agencies, so that appropriate development may be advanced in the County rather than in neighboring jurisdictions where development costs are less and/or more predictable.

Specific Comments

- Master Plans/Master Plan Conformity

Since the establishment of zoning and planning authority in Montgomery County, master plans always were defined as "guidelines" to help decision makers in land use matters. More recently, the Subdivision Regulations and provisions for Site Plans were changed to require "substantial conformity" with such master plans. The problem with this requirement is that master plans are long-term visions, often left in place for 20 years or more. No matter how smart we believe ourselves to be at present, none of us has a clear vision that far out, nor the ability to fully anticipate future developments or circumstances. For example, COVID's impact on office demand and Amazon's impact on the retail world were unforeseeable within a previously approved master plan's 20-30 year horizon. Unfortunately, the "substantial conformity" requirement, when combined with the infrequency of our master plan updates, stands in the way of important development projects, including those providing affordable housing.

We believe the "substantial conformity" requirement should be eliminated from the County Code.

- Intake Process at Park and Planning¹

The intake process has been taking entirely too long. Recently, some applications have taken more than four months to move through intake. Although it does seem to be improving with new staff and a focus on improving the process, it still appears that intake staff are being asked to review application materials far too substantively. They seem to delve into the content of submitted documents as opposed to simply checking to see whether those documents have been submitted (e.g. a traffic study, a statement of justification or a particular plan). Applicants always can improve their submissions. However, while delaying acceptance of the application - and thereby the overall application process - may serve to "meet" the 90 (Sketch Plan)/120 day (Preliminary and Site Plans) application clock on paper, it does not help the overall process.

¹ See also NAIOP letter dated July 25, 2023.

We suggest that the intake staff should "check the box" for the submitted materials, accept the application and, simultaneously if necessary, let the applicant know where some additional information might be useful.

- Certified Plans²

Once a Preliminary Plan or Site Plan is approved for a project, the applicant is required to prepare a Certified Plan that reflects the approval and all of its conditions. Certification of these plans is a prerequisite to moving forward with the project, but the time period for the certification process has become far too long, sometimes taking four months or more. At this time, there is no proscribed time limit for reviewing Certified Plans and this results in a de-prioritization of these plan reviews in favor of other work demands. Given that it really is a ministerial act, the plan certification process certainly could be streamlined.

We suggest a time limit of, at most, forty-five days for approval of Certified Plans. This timing could be further accommodated if Certified Plans could be filed before the applicable Resolution is mailed.

- Plat Process³

New development generally requires approval of a record plat. The time period for approval and recordation of these plats has grown exponentially in recent years sometimes taking as long as six months. This certainly could be shortened thereby enabling approved projects to get to market more quickly.

We suggest a time limit for the review and approval of plats of no more than 2-3 months.

- NRI/FSD Reviews

The timing and review of Natural Resources Inventory / Forest Stand Delineation ("NRI/FSD") environmental baseline plans are out of sync with the current development review processes. Under current procedures, they must be submitted and approved before substantive development applications may be filed. In addition, the review times for NRI/FSDs can take several months if one considers the current 45-day initial review and 30-day resubmission reviews, coupled with no timeframe for supervisor signature.

We suggest that NRI/FSDs be allowed to be filed along with a development application and must adhere to strict review timeframes that correlate to the applicable development review timeframes. Also, the NRI/FSD duration should be extended from the current 2-year duration to 4 years to allow for flexibility in the plan review process and/or in response to changing market conditions in which plans are deferred until more favorable markets emerge.

² See also NAIOP letter dated July 25, 2023.

³ See also Miles and Stockbridge letter dated July 12, 2023.

- Resolutions⁴

A development plan application is currently deemed approved once the Planning Board issues the applicable approval Resolution and it is signed by the Planning Board Chair. These Resolutions may be approved along with the underlying development plan; however, the Resolution must be brought back to the Board if there are any changes to the plan approval during the Planning Board hearing.

There is no timeframe for approving a revised Resolution. In addition, because there is currently no opportunity for the applicant or the public to review the Resolution prior to it being approved, signed and mailed, approved Resolutions often have to go back before the Board to fix a correctible error. As a result, the process to obtain a signed Resolution can take as much as a month and even longer if it needs to be corrected.

We suggest that any Resolution that is not approved at the hearing on the underlying plan must be approved at the next Planning Board session. The adopted Resolution must also be made available to the public/applicant after adoption, even before it is signed and mailed. (If the copy is not the signed version, stamp it as “approved but not signed” or as an “unofficial copy”.) These changes could easily save weeks in the process of ensuring that the signed Resolution is complete and accurate.

- Statutory Review Timelines

Currently, applications are supposed to be heard by the Planning Board within 120 days of filing and the applicant’s final materials must be submitted to Staff a minimum of 65 days ahead of the public hearing date. This only allows 55 days (120 minus 65) for the actual review and addressing of issues with agencies. Notably, the 120 days is set forth in the Code. The other times (65 days, for example), have been established by the Board/Staff. Any extension of the 120-day period must be reviewed and approved by the Planning Board, except for one 30-day extension that may be granted by the Planning Director.

Taking each extension request to the Board is a waste of time and resources for the Board, the Staff, and the applicant because the extension process takes away from the review focus. The applicant must apply and a Staff report must be issued for each extension. Because the applicant and Staff try to seek the minimum extension necessary, additional extensions are often required because issues do not get resolved within the applicable extension period.

We suggest shortening the 65 day period for the Planning Board Staff to confirm the final plan and prepare its Staff Report, so that the actual review process can have more time to work out issues. For example, if all materials had to be submitted 45 days before the hearing, then there would be 75 days for the actual review of the application and resolution of issues. We further suggest that all extensions of the review period duration (not just the first 30 days), be approved by the Planning Director or by simple agreement of the Applicant and Staff. Extensions should only be taken to the Planning Board if there is a disagreement.

⁴ See also Miles and Stockbridge letter dated July 12, 2023.

- DPS Reviews

The Department of Permitting Services (“DPS”) has a general, unstated policy that appears to require 30 days for any review. This unstated policy is applied to every submission, whether it is original or a resubmission. The resulting culture is one in which each submission or resubmission appears to go to the bottom of the pile. This eliminates any momentum or application familiarity on resubmissions.

We suggest that DPS establish their review timeframes in writing so that everybody knows what the expectation should be. We further suggest a shorter time (such as fourteen calendar days) for reviews of re-submissions, and a much shorter time (e.g. two business days) for reviews of simple or near-final resubmissions.

- Conditional Use Applications

The current process requires redundant reviews in which the Planning Board and Board of Appeals/Zoning Hearing Examiner each convene public hearings and make findings on how/whether an application meets the applicable standards. This process is daunting, expensive and time consuming, particularly for unsophisticated applicants with relatively modest projects.

We suggest that the process be revised so that the Planning Board may take action on all or most applications without a requirement for Board of Appeals/Zoning Hearing Examiner action.

- Relocate MCDOT Subdivision Development office/function into DPS

As part of a prior re-organization of executive departments during the Doug Duncan administration to create a “one stop shop” for permitting, DPS was formed and all development approval processes were consolidated into the then newly-created DPS. The only permitting process element that was not consolidated into DPS was the subdivision development review function that was left under the Montgomery County Department of Transportation (MCDOT”). One could only speculate that this was likely a political decision at the time (though the legislative history may provide more specific insight). As a result, the DPS process is not all under one umbrella with one agency director in control. Thus, the DPS process is subject to the MCDOT development review process authority over proposed subdivisions. This sets up the regularity of interagency conflicts. This separation should be eliminated by being brought into DPS with the rest of the permitting functions.

We suggest all subdivision review functions in MCDOT be transferred to DPS. At its inception, DPS was intended as a “one-stop shop” for development approval reviews and our proposed move would allow DPS to fulfill its mission, while helping to streamline the subdivision review function.

All development review processes should be predictable, fair, and not anti-competitive with other jurisdictions, or contrary to the County's objectives for adding housing and jobs. We thank the Development Review Process Workgroup for its consideration of this input and for its understanding as we continue collectively to try to increase the County's economic competitiveness going forward.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.
LAND USE PRACTICE



Patrick L. O'Neil, co-Chair

Chris Ruhlen, co-Chair
Stuart R. Barr
Robert G. Brewer Jr.
Peter Z. Goldsmith

Patricia A. Harris
Robert R. Harris
William Kominers
Steven A. Robins

Elizabeth C. Rogers
Stacy P. Silber

cc (by e-mail): Marc Elrich (via meredith.wellington@montgomerycountymd.gov)
Artie Harris
Chris Conklin
Rabbiah Sarbbakhant

August 6, 2023

To: Members of Development Review Process Workshop Listening Session

From: Phillip Jakobsberg

1709 Belvedere Blvd

Silver Spring, MD 20902

Email: pjakobsberg@wabtec.com

Cell: 301-922-5527

Members of the Review Process:

I testified at the virtual session on Wed, August 2nd. This is my written testimony follow-up.

I am testifying with regards to the replacement of the Medical Center Building across from the Forest Glen Metro, on the corner of Forest Glen Road and Georgia Avenue. I live in the Forest Estates neighborhood directly behind the Medical Center building (please see the diagram at the bottom).

I understand the concept behind 'Smart Growth' – building at Metro stops to best utilize public transportation - and I generally support it. But the process for analyzing the transportation impacts to our neighborhood by this project have been deeply flawed.

As currently designed, the project calls for a 450+ car garage with an entrance onto Georgia Ave for northbound cars, and another onto Woodland Drive (into our neighborhood) for southbound cars. The number of cars destined for southbound travel will be substantially higher, as this provides access to the beltway and vehicles destined for DC (see diagram at bottom).

A reasonable estimate would be 150-200 cars every morning dumping into the Forest Estates neighborhood to travel onto the beltway or into DC. As the diagram shows, there is already a substantial backup to access Forest Glen Road every morning. I know this because I travel to the beltway at 8AM every day. The diagram reflects a typical day as things currently stand. Adding another 150-200 more cars will lead to major gridlock at this entrance in particular, and throughout the neighborhood in general.

Back in the Spring, the Planning Board released their Sketch Plan (No. 320230020) which called for a traffic study. This was a result of multiple testimonies from our neighborhood residents about the increased traffic issues a Woodland entrance would introduce. Note that no such entrance currently exists. It is my understanding that during Covid the zoning was changed to allow for it. This happened without the consent or participation of our neighborhood.

A traffic study is now being performed by the developer, not the county. In my view, this is akin to asking a fox to guard a henhouse, as the developer has every profit motive to see that the study is favorable to their design.

Our neighborhood received a preliminary presentation this past July. As expected, the traffic consultant's conclusions minimized the impact on our neighborhood. He quoted various federal guidelines, but would not answer simple questions, such as, "How much longer will it take to exit from our neighborhood onto Forest Glen Road at 8AM in the morning than it does now?"

So this brings me back to the problem's with this process. Here are several questions:

1. How does it make sense for a biased party (the developer) to be running a traffic study on a project that will have a critical impact to our neighborhood? To ensure a credible result, shouldn't this study be run by the county?
2. If this project goes through as planned, how does the county consider this to be 'smart growth'. Doesn't smart growth mean building with higher density at the Metro stops with the intent of limiting the number of cars added to our traffic system? A 450+ car garage does not represent that.
3. Many in our neighborhood feel disenfranchised by the process. The only presentations given about the project have come from the developer. Many of us feel that with the new zoning for the Woodland entrance and a biased traffic study by the developer, the process is 'fixed' to yield a set result, which sacrifices the current state of our neighborhood.
4. No options to putting in the Woodland entrance have been discussed with our neighborhood. There are options, including having a single entrance onto Georgia, and handling the increased traffic load through other traffic engineering measures there.

At this point, many of us in Forest Estates are considering funding our own traffic study, as we have lost confidence that we will get a fair assessment without it. As a county resident, I feel deeply saddened that the county's pandering to developer and not to the needs of the homeowners has pushed us to this point.

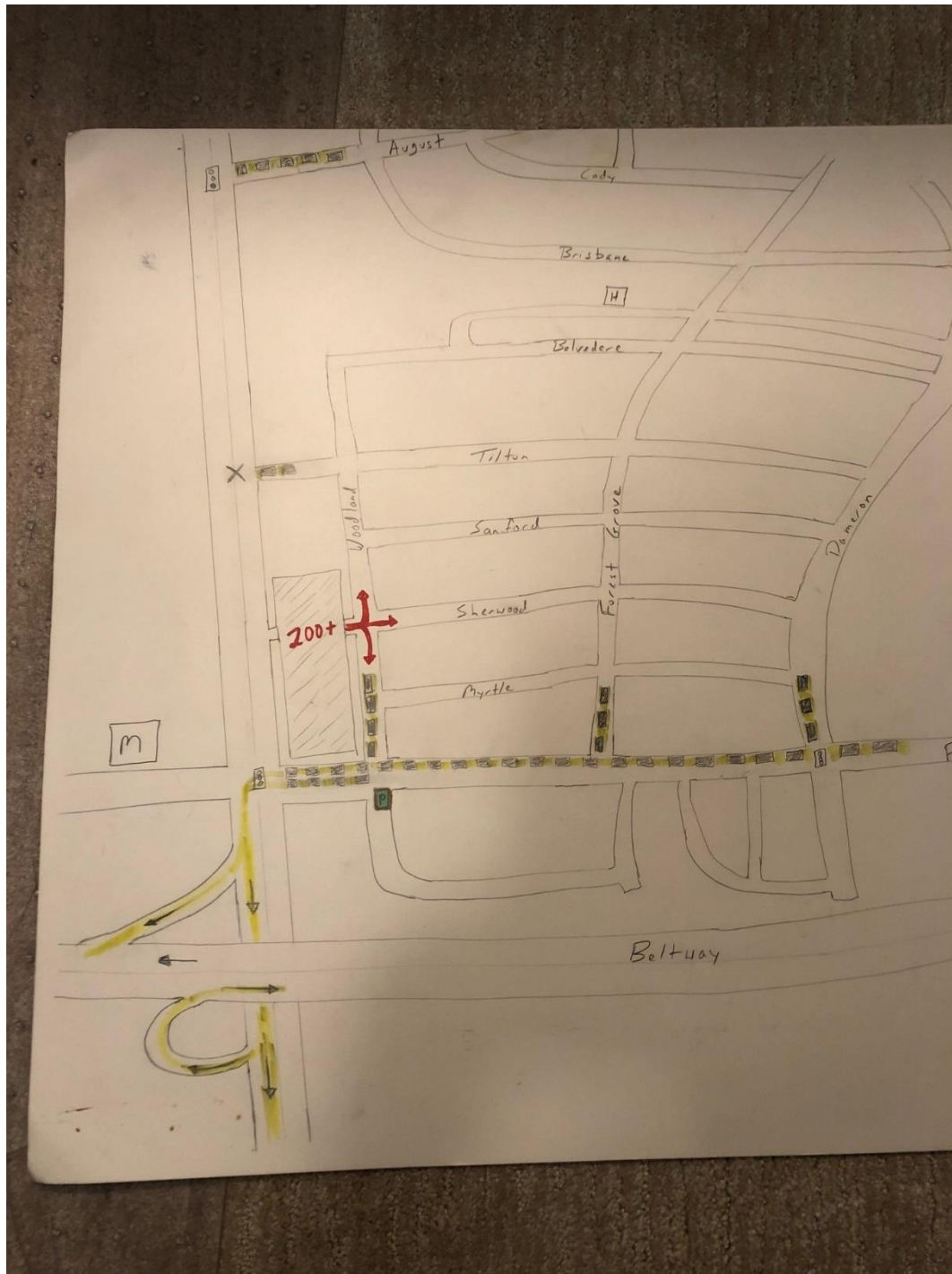
I hope that the members of this committee will take these concerns to heart and work with our neighborhood to get a fair assessment. I ask you to put yourself in our shoes – would you want an increased traffic load like the one discussed here to be thrust upon your neighborhood?

Please feel free to reach out to me to discuss this issue further at your convenience.

Regards,

Phil Jakobsberg

This drawing below illustrates the current traffic at 8AM. The routes out of our neighborhood are shown in yellow. Georgia Avenue is shown running North/South and Forest Glen Road East/West. Note the traffic backup past Dameron. Imagine the addition of 150-200 cars leaving the facility on the corner of Georgia and Forest Glen for a southbound destination. All entrances out of our neighborhood are likely to become gridlocked.



Balmer, Emily

From: Mary Ostrowski <mostrowski3@gmail.com>
Sent: Tuesday, August 15, 2023 2:54 PM
To: MC-Development; meredith.wellington@montgomerycountymd.gov
Subject: Rock Creek Manor Sidewalk Program

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

To whom it may concern:

As the county marks the roads and current grassy areas for sidewalks to be installed against the wishes of our community's majority, I entreat you to reconsider this project.

There are no recorded pedestrian accidents in our neighborhood, so what problem are we trying to solve? Additionally, why has the county refrained from applying for federal funding for this project? Are taxpayers' funds so plentiful the county sees no need to seek outside funding? Several of us are concerned that the county is keen to forego environmental studies before executing the project. Those studies would show sidewalks would reduce water infiltration to the subsurface and increase surface runoff, something we know will happen to the detriment of our environment. Further, removing large trees will increase flood risks.

It is not too late to halt this project, which has been pushed through by a small minority of neighbors.

Mary Ostrowski
14113 Parkvale Rd
Rockville MD

Joyce T. Gwadz
Bethesda, Maryland
August 14, 2023

To the Development Review Process Workgroup:

This correspondence is to convey to you my concerns regarding the current Development Review Process and a few ways I believe the process could be improved. My concerns and suggestions are:

1. Community Meeting

The "Developing Land in Montgomery County" chart on the website shows as the second step in the application process an "Applicant Community Meeting" and states that "Applicant provides notice and hosts" the meeting. However, the experience is that residents are often unaware of the meeting, and the notice process should be strengthened and clarified. More important, it is not at all clear how community comments make their way to the Development Review Committee (DRC). At least one member of the Planning staff should attend this initial community meeting to hear the comments first-hand, take notes for public posting, and report back to the DRC. Because different people may understand community comments differently, it is important that someone in addition to the applicant representatives have first-hand knowledge of what transpired at the community meeting.

2. Development Review Committee Meeting

After the Community Meeting and the application's formal acceptance, the application is reviewed at a DRC meeting (step 3 on the chart). Participants include Montgomery Planning and Parks, DOT and other Montgomery County agencies, utility companies, Maryland State agencies, and others whose area of responsibility may be affected, and the applicant, so that problems can be raised and issues addressed at the earliest point in the process. The meetings are live-streamed and open to the public, but there is little or no notice to members of the public, and no opportunity for public comment as part of the review process. Under the current process, all affected parties are represented except community members. Residents, representatives of local businesses and organizations, and others with a stake in the community may attend but only to observe. I do not suggest inviting community members to actively participate in the review meeting. But at a minimum, they should expressly be invited to submit at least written comments after the DRC meeting, to be considered as part of the review and revision process (step 4 on the chart). Otherwise, community members have no opportunity to consider and comment on issues raised (and possible solutions recommended) by the DRC participants until after Planning, the DRC agencies, and the applicant have worked to resolve issues to their satisfaction. This means that issues raised at the DRC meeting are resolved for presentation to the Planning Board with no community input. Although community members can comment at the Planning Board Hearing, by that time it is too often

too late for meaningful community input or, if community input does raise significant issues that must be addressed, the process is unnecessarily delayed. The earlier in the process concerns are made known, the earlier they can be addressed, moving the process along.

3. Identify and Resolve Issues and Problems at the Earliest Point

Under the current process, following the DRC meeting Montgomery Planning and DRC agencies meet with the applicant to address issues and comments (step 4 on the chart, "Revisions and Plan Preparation for Planning Board Hearing"). Throughout this process, Planning and each department or agency must acknowledge and respect the expertise and jurisdiction of the others, working collaboratively and not in silos, to avoid conflicting recommendations that must be resolved later. They must also consider the proposal cumulatively, in context, not in isolation from other development projects approved or in the pipeline, and taking into account agency plans and projects ongoing or reasonably anticipated. It is important that County and State agencies involved in development review make full analysis of the project and meaningful participation in the DRC meetings a high priority, to ensure that problems are identified and addressed early and to allow the project to proceed more efficiently.

The approval process would be improved and expedited if community members are invited to submit written comments after the DRC meeting and the participants at this "Revisions" step include an independent resource responsible to collect and convey those comments and concerns for review and consideration. The initial community meeting introduces the project in broad terms, giving community members their first chance to see what is proposed. The open DRC meeting offers community members the opportunity, by attending or watching the recording, to learn more about and better understand the project, and with that understanding to provide more thoughtful comments. Community members, particularly those residing (or with a business) in the area of the project, bring a lived experience to the DRC, and will point out issues and concerns that may not be evident to the DRC agencies, but nevertheless should be identified and addressed. These concerns may include things like loss of tree canopy, stormwater management, traffic issues (pedestrian, bicycle, and auto), and the impact other area development has had on their community, information that could be valuable to planners and the various agencies as they consider the application. It will expedite the approval process if issues like these are raised and addressed as part of the revisions and preparation for the Planning Board Hearing rather than left to be raised at the Hearing and addressed only afterward (if at all). Perhaps a staff member can be responsible for compiling community comments and concerns and presenting them in the discussions. (This same person would presumably attend the initial community meeting and report the community comments to the DRC meeting.)

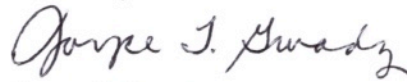
4. Other Issues

It is important that those participating in the DRC process be familiar with the Montgomery County Climate Action Plan and its recommendations. Somewhat related, in reviewing stormwater runoff, more than water quality must be considered in the development context. It is my understanding that DPS does not consider the risk of overburdening the sewer system, which can lead to unsanitary flooding, or damage that may be caused to neighboring properties by stormwater runoff, which can lead to unnecessary disputes between adjoining property owners. Addressing these stormwater impacts during the application process will help avoid costly problems that may arise during the development process and after.

More generally, community participation needs to be encouraged and welcomed as projects are approved, and as significant changes are made or waivers granted. Meaningful community participation and a collaborative approach could do much to speed the process along, important for the shorter term, and lead to community support for (or at least acceptance of) new projects, important for the longer term.

Thank you in advance for your consideration of these comments, and thank you to each of you for your work as part of the Development Review Process Workgroup.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joyce T. Gwadz". The signature is fluid and cursive, with the first name "Joyce" being more prominent.

Joyce T. Gwadz
Bethesda

Daniel Meijer
929 Gist Avenue
Silver Spring Maryland 20910
(240) 381-4396

dmeijer@hotmail.com

August 12, 2023

Montgomery County's Development Review Process Workgroup
development@montgomeryplanning.org
meridith.wellington@montgomerycountymd.gov

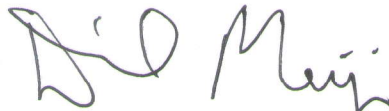
Dear Members of the Development Review Process Workshop,

You may want to address the concerns expressed by former Maryland State Senator Idamae Garrott regarding an: "...incident when she was a member of the [Montgomery] County Council" after she received "a check of \$100 in the mail from a Wheaton businessman." whom she learned later was requesting: "to rezone a residential property on Georgia Ave to commercial use". After learning that all her other colleagues received such a check; "a week later, out of the blue, a council member moved to reconsider the rezoning case and it passed 6-1, with Garrett against." *

That problem appears to still occur today, but now via a Zoning Text Amendment (ZTA) with a group (just to avoid becoming an unconstitutional [Maryland State] illegal "Special Law") that is so narrowly defined that it ultimately affects only one property. It then follows with a generous campaign contribution from the developer or owner of the property to the Councilmember who introduced that ZTA.

An independent oversight State funded "People's Council" could detect that in the development process and bring to the State Attorney's immediate attention such: "**Red Headed Eskimo [ZTA] Bills**". I believe it may be the most effective way to stop such erosion of infrastructure limitations of what communities can support as carefully calculated in Master or Sector plans.

Sincerely Yours,



Daniel Meijer

*Quotes from: "Conscience has ruled Garrott's career", Gazette, 9/8/1993, page A-1

Conscience has ruled Garrott's career

by Manju Subramanya
Staff Writer

Sen. Idamae Garrott is a politician with a conscience.

A 1970 incident when she was a member of the County Council still rankles with the 76-year-old legislator, who announced plans two weeks ago to retire from politics when her term ends in January 1995.

The District 19 senator recalled that when she was a council member she received a check of \$100 in the mail from a Wheaton businessman.

But later, going through her council packet, she found that a rezoning case involving the businessman—a request to rezone a residential property on Georgia Avenue to commercial use—was to be heard by the council the next day. Garrott said that she promptly returned the check.

The next day she discussed the incident with colleagues on the council who told her that they had received similar checks but had not returned them. When the rezoning case came up before the council, Garrott said that she waited with bated breath and was relieved when the rezoning was denied, 7-0.

But the incident did not end there. She recalled that a week later, out of the blue, a council member moved to reconsider the rezoning case and it passed 6-1, with Garrott against.

"This always sort of rankled with me. I felt it was not entirely proper," she said.

Now Garrott is thinking of introducing legislation requiring County Council members to disclose contributions from developers in excess of \$1,000. It is



Idamae Garrott

one of the final bills she hopes to sponsor before retiring.

Garrott said that she had never been subservient to those who funded her because her elections had always been financed by small contributions, some as little as one dollar, from hundreds of people.

"This has enabled me to vote the way I want to on certain issues that are matters of conscience," she said.

Conscience also played a part in Garrott's announcement one year ahead of the September 1994 primary election that she was retiring in January 1995.

Garrott, a 24-year veteran of politics, said that she never dreamed she would be in politics one day.

At age 19, after graduating from Western Maryland College, she wanted to be a newspaper reporter and for a short while sold classified advertisements for the now defunct Washington Daily News.

Then she taught state and city government in the Baltimore City school system, information that would stand her in good stead in the years ahead.

In 1947 she married Bill Garrott, an economist working with the U.S. Department of Agriculture, and they moved to Montgomery County.

Then one day, she recalled, a woman came knocking at their door. She was from the Montgomery County League of Women Voters, scouting for members to join a new unit in Glenmont.

"It was fate. I told her that, gee, I'd love to go," Garrott said.

At the league's third meeting, Garrott offered her services to the League's state government committee. Soon she was on the sub-committee on taxes. She then wrote a book, "Paying our way—Maryland State Taxes and You."

She was elected to the County Council in 1966, becoming president in 1970. In 1978 she ran for the State House of Delegates and after an eight-year stint, was elected to the State Senate in 1987.

Garrott said she has no regrets. "I think it's been rewarding, challenging, sometimes frustrating—but above all it's been a way to help people."

In 1984 she introduced a bill that prohibited construction of the controversial Rockville Facility, a freeway that was to connect Georgia and Wisconsin avenues. And she has vehemently opposed the construction of the proposed Intercounty Connector, a roadway which would connect Interstate 270 with Interstate 95/Route 1 in Laurel.

Balmer, Emily

From: Jane Lyons-Raeder <janeplyons@gmail.com>
Sent: Tuesday, August 8, 2023 2:56 PM
To: MC-Development; meredith.wellington@montgomerycountymd.gov
Cc: county.council@montgomerycountymd.gov; Friedson's Office, Councilmember; councilmember.balcombe@montgomerycountymd.gov; councilmember.katz@montgomerycountymd.gov; councilmember.luedtke@montgomerycountymd.gov; councilmember.fani-gonzalez@montgomerycountymd.gov; councilmember.mink@montgomerycountymd.gov; councilmember.stewart@montgomerycountymd.gov; councilmember.albornoz@montgomerycountymd.gov; councilmember.sayles@montgomerycountymd.gov; councilmember.jawando@montgomerycountymd.gov; councilmember.glass@montgomerycountymd.gov; Pamela.Dunn@montgomerycountymd.gov; tim.cupples@montgomerycountymd.gov; tiffany.ward@montgomerycountymd.gov; ben.kramer@senate.state.md.us
Subject: Comments to the Development Review Process Workgroup

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Good afternoon,

My name is Jane Lyons-Raeder and I am a renter in downtown Silver Spring. I am also a community activist who cares deeply about the environment and housing affordability. This Development Review Process Workgroup is an opportunity to make Montgomery County the most attractive place in the DC region to invest in new construction. This would mean that more regional growth would be focused in Montgomery – a more sustainable place for new development compared to jurisdictions that do not have as robust of transit and job center proximity – and that our housing stock would come closer to meeting demand. We also need private development to realize the majority of our master plans, including the countywide Bicycle Master Plan. Finally, more development in Montgomery County means a larger tax base, which is needed to fund critical public programs.

Thus, I urge you to approach this workgroup with the mindset that **new residents are not a burden**. The goal should not be to figure out how to get developers to give as many community concessions as possible, but to work with developers as partners in building a county that is sustainable, inclusive, and welcoming. People are economic activity, but people are also our friends, family, coworkers, and caretakers. People are our community and our strength.

Recently, Montgomery County has made necessary policy changes that add up to a more unfriendly development environment. This includes tax increases, sustainability and safety mandates on multifamily property owners, and rent stabilization. Although I generally support these policies, they also need to be balanced with regulatory changes that keep investors interested in Montgomery County.

I won't pretend to be an expert in the current county development process, so I don't have too many specific recommendations for you. But I encourage the workgroup to focus on streamlining all development processes so that it is **fast, easy, and predictable** for developers, staff members, and neighbors.

To that end, **community input should primarily be done at the master planning stage and should not bog down the development process for individual projects**. We should not expect neighbors to attend multiple community meetings for a single project – that is valuable time that few residents are able or willing to give up. This is part of the reason we have delegated decision making to our appointed Planning Board and

elected County Council. Research has found that residents who are willing to spend their time commenting on development proposals are disproportionately opposed to new development, older, whiter, and wealthier than the rest of the community. As such, master planning is the better stage at which to engage the community on the direction of growth and development. Should anyone have questions about an individual project, information should be easy to access and in multiple languages, including information about how to submit comments. There is a place for submitting comments and holding public meetings on individual development proposals, but they should not significantly impede the development process, especially when in alignment with approved master plans.

Sincerely,
Jane

--

Jane Lyons-Raeder
(410) 474-0741
janeplyons@gmail.com

Balmer, Emily

From: Elizabeth Joyce <lafleurjoyce@gmail.com>
Sent: Monday, August 7, 2023 9:39 PM
To: MC-Development; meredith.wellington@montgomerycountymd.gov
Subject: Statement for Development Review Process Workgroup

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Delegate Lesley Lopez, Chair

Montgomery County Development Review Process Workgroup

mailto: [mailto: development@montgomeryplanning.org](mailto:development@montgomeryplanning.org); meredith.wellington@montgomerycountymd.gov

August 7, 2023

Dear Delegate Lopez and Development Review Process Workgroup members:

Thank you for the opportunity to submit testimony to this committee about the Development Review Process. My name is Elizabeth Joyce, and I am a longtime Silver Spring civic activist, speaking for myself.

I want to thank Delegate Lopez for initiating these proceedings and sponsoring HB 778, the Trust and Transparency Act, which increases accountability for the Maryland National Park and Planning Commission (M-NCPPC) and the Montgomery County Planning Board. The M-NCPPC and the Montgomery County Planning Board operate under a nearly 100-year-old charter that governs planning in only two Maryland Counties (Montgomery and Prince George's) and clearly needs to be updated and ideally, replaced.

Context for Development Review Committee Deliberations: This committee's focus is to recommend how to streamline the development review process. But before doing so, it is crucial to apply the "Trust and Transparency" standards to this and all Planning Board procedures and Montgomery County Council oversight of the Planning Board. Last year, the Council unanimously passed Thrive Montgomery 2050 despite massive public opposition, a critical report from a racial equity and social justice consultant, and a strong Department of Environmental Protection warning of the damage Thrive's "smart growth" approach could do. Thrive's most powerful advocates (for the plan and the non-transparent process behind it) were the Montgomery County Planning Board chair and his allies on the Council's Planning, Housing, and Economic Development Committee.

The rushed, opaque Thrive development process left many residents feeling excluded, uninformed, and subordinated to powerful financial interests that too often had the Council's ear. The forced resignation of the entire Planning Board not long after Thrive's passage—and the appointment of a temporary board not authorized under Maryland law—increased public distrust and placed the new Board under a cloud (through no fault of their own). Then, according to a [recent MD Attorney General ruling](#), the Montgomery County Council appointed and swore in three new Planning Board members weeks before the County Executive approved or vetoed their appointments, in violation of state law. Legislation to prevent such illegal actions and to reverse such appointments and the rulings of illegally appointed boards should be an immediate priority for the Maryland General Assembly, which has authority over the M-NCPPC and its operations.

Trust and Transparency: Right now, the Workgroup should ask how transparent the development review process has been and will be. What will be the roles of affected stakeholders, and when can they weigh in—only at developers' initial meetings and never again? When will amendments and public notice be allowed or required, and under what rules? How will the process prevent *ex parte* communications and deals with

interested parties, as may have occurred previously? (But the public does not know because there has been no published investigative report from the M-NCPPC.) What powers will expert executive agencies such as the Department of Environmental Protection, the Department of Transportation, and the Office of Legislative Oversight have in the process? Answers to all these questions should inform and direct the development review process.

These questions are not hypothetical, given the Planning Board's recent ethics violations and the Council's lack of oversight until the first-ever forced resignation of the entire Planning Board. In addition to the chair's admitted violations of County rules on alcohol in the workplace, these issues included:

- Repeated violations of the [Open Meetings Act](#),
- Planning Board Chair's [criticism of Compliance Board rulings on Open Meetings Act](#).
- [Failure to require lobbyists to register](#) in accordance with M-NCPPC lobbying rules.
- [Planning Board abuses of the consent agenda](#) to evade public hearing requirements.
- Planning Board [resistance to Council requests for greater transparency](#).

Such violations continued even after the passage of [**HB 1059, Bicounty Commissions—Ethics—Certification of Compliance**](#), requiring each bicounty commission to certify to the Ethics Commission that the bicounty commission is in compliance with requirements relating to conflicts of interest, financial disclosure, and lobbying; and providing that regulations adopted by a bicounty commission may be modified to make the regulations relevant to the bicounty commission.”

Some have argued that the replacement of the Montgomery County Planning Board solves such problems. But the structures that enabled and overlooked such violations remain in place, validating fears that transparency and accountability to the public and appropriate agencies continue to be elusive goals.

I hope the workgroup's findings begin the process of making trust and transparency integral to the development review process and ultimately passing state legislation to overhaul the system that compromised these good government ideals.

Testimony of Steven A Robins
Before the Development Review Process Workgroup
August 2, 2023

Good evening Chair Lopez and Members of the Committee:

My name is Steven Robins and I am a land use, zoning and real estate attorney at the law firm of Lerch Early & Brewer in Bethesda. I am testifying before you as an individual. Our Land Use Group will be submitting separate comments for the Committee's consideration. I have been practicing land use law predominantly in Montgomery County since 1986 and have worked on many development projects here in the County. As a result, I have firsthand experience working with the Maryland-National Capital Park & Planning Commission, the Montgomery County Department of Permitting Services, the Montgomery County Department of Environmental Protection, the Montgomery County Department of Transportation and many other County and State agencies associated with the Development Review Process. For years, I, along with others, have advocated for a streamlined development process and appreciate the efforts of all involved to help make this happen. Of course, there still are things that need to be accomplished to make the process smoother and more responsive to the needs of all stakeholders. I applaud your Committee's goal to make certain that Montgomery County is economically competitive in the region.

I, along with others you have heard from, continue to support the independent functioning of M-NCPPC. There does not appear to be any circumstances that would require a reorganization of the agency or a change in the authorization structure. The independent nature of M-NCCPC is a good thing that works well and does not need to be fixed.

There continues to be some issues with agency coordination since most development applications need to be reviewed by M-NCPPC, MCDOT, SHA, DPS, WSSC, Fire and Rescue and possibly DEP. These issues generally involve receiving conflicting requirements which is left to the Applicant to sort out as well as the timeliness of receiving comments. Committing to improving timely reviews, establishing a process for resolving conflicts, and addressing overlapping roles and authority would be welcome.

Over the past year, M-NCPPC has worked to improve its DRC process. DRC meetings are more meaningful and helpful. An area that continues to be problematic is the case intake process. It is taking too long for applications to be accepted for review (*i.e.*, months) and this really creates issues for applicants. This could be addressed by imposing time limits on the intake process and by limiting the review to making sure an application is complete rather than substantive comments about the application itself. I credit the intake division for beginning to address these concerns but there is more to accomplish to make this more process efficient and less burdensome.

Two areas that have long been discussed and, while admittedly have improved, are the Site Plan Certification process and Record Plat process. Certifying a site plan can take 3-4 months which is just too long. There should be a time frame set to complete such a certification that is administrative in nature. Regarding Plats, it can take 6 months to obtain Plat recordation and this simply is too long. One suggestion is to delegate responsibility for plat review and approval to MNCPPC, instead of multiple agencies. Also, there are many post development activities that are tied to Plat recordation. Time delays significantly impact development schedules.

Traffic Mitigation Agreements/Plans that are required to be reviewed and approved by M-MNCPPC and MCDOT also are taking too long. There should be a time period set for such review once the document is submitted to the agencies. This is an issue that needs to be addressed.

Strong consideration should be given to providing the Planning Director at M-MNCPPC with greater authority to approve certain plans and administrative amendments. The Director is fully capable of undertaking this responsibility, the end result of which would be to reduce unnecessary Staff and Board time on matters that appropriately could be delegated to the Director.

We are very fortunate in our County to have competent and committed Technical Staff at M-MNCPPC (as well as the Planning Board) and the County agencies as part of the process. There certainly are improvements that can and should be made while leaving the existing administrative framework in place.

Thank you very much for the opportunity to comment.

August 6, 2023

To: Members of Development Review Process Workshop Listening Session

From: Phillip Jakobsberg

1709 Belvedere Blvd

Silver Spring, MD 20902

Email: pjakobsberg@wabtec.com

Cell: 301-922-5527

Members of the Review Process:

I testified at the virtual session on Wed, August 2nd. This is my written testimony follow-up.

I am testifying with regards to the replacement of the Medical Center Building across from the Forest Glen Metro, on the corner of Forest Glen Road and Georgia Avenue. I live in the Forest Estates neighborhood directly behind the Medical Center building (please see the diagram at the bottom).

I understand the concept behind 'Smart Growth' – building at Metro stops to best utilize public transportation - and I generally support it. But the process for analyzing the transportation impacts to our neighborhood by this project have been deeply flawed.

As currently designed, the project calls for a 450+ car garage with an entrance onto Georgia Ave for northbound cars, and another onto Woodland Drive (into our neighborhood) for southbound cars. The number of cars destined for southbound travel will be substantially higher, as this provides access to the beltway and vehicles destined for DC (see diagram at bottom).

A reasonable estimate would be 150-200 cars every morning dumping into the Forest Estates neighborhood to travel onto the beltway or into DC. As the diagram shows, there is already a substantial backup to access Forest Glen Road every morning. I know this because I travel to the beltway at 8AM every day. The diagram reflects a typical day as things currently stand. Adding another 150-200 more cars will lead to major gridlock at this entrance in particular, and throughout the neighborhood in general.

Back in the Spring, the Planning Board released their Sketch Plan (No. 320230020) which called for a traffic study. This was a result of multiple testimonies from our neighborhood residents about the increased traffic issues a Woodland entrance would introduce. Note that no such entrance currently exists. It is my understanding that during Covid the zoning was changed to allow for it. This happened without the consent or participation of our neighborhood.

A traffic study is now being performed by the developer, not the county. In my view, this is akin to asking a fox to guard a henhouse, as the developer has every profit motive to see that the study is favorable to their design.

Our neighborhood received a preliminary presentation this past July. As expected, the traffic consultant's conclusions minimized the impact on our neighborhood. He quoted various federal guidelines, but would not answer simple questions, such as, "How much longer will it take to exit from our neighborhood onto Forest Glen Road at 8AM in the morning than it does now?"

So this brings me back to the problem's with this process. Here are several questions:

1. How does it make sense for a biased party (the developer) to be running a traffic study on a project that will have a critical impact to our neighborhood? To ensure a credible result, shouldn't this study be run by the county?
2. If this project goes through as planned, how does the county consider this to be 'smart growth'. Doesn't smart growth mean building with higher density at the Metro stops with the intent of limiting the number of cars added to our traffic system? A 450+ car garage does not represent that.
3. Many in our neighborhood feel disenfranchised by the process. The only presentations given about the project have come from the developer. Many of us feel that with the new zoning for the Woodland entrance and a biased traffic study by the developer, the process is 'fixed' to yield a set result, which sacrifices the current state of our neighborhood.
4. No options to putting in the Woodland entrance have been discussed with our neighborhood. There are options, including having a single entrance onto Georgia, and handling the increased traffic load through other traffic engineering measures there.

At this point, many of us in Forest Estates are considering funding our own traffic study, as we have lost confidence that we will get a fair assessment without it. As a county resident, I feel deeply saddened that the county's pandering to developer and not to the needs of the homeowners has pushed us to this point.

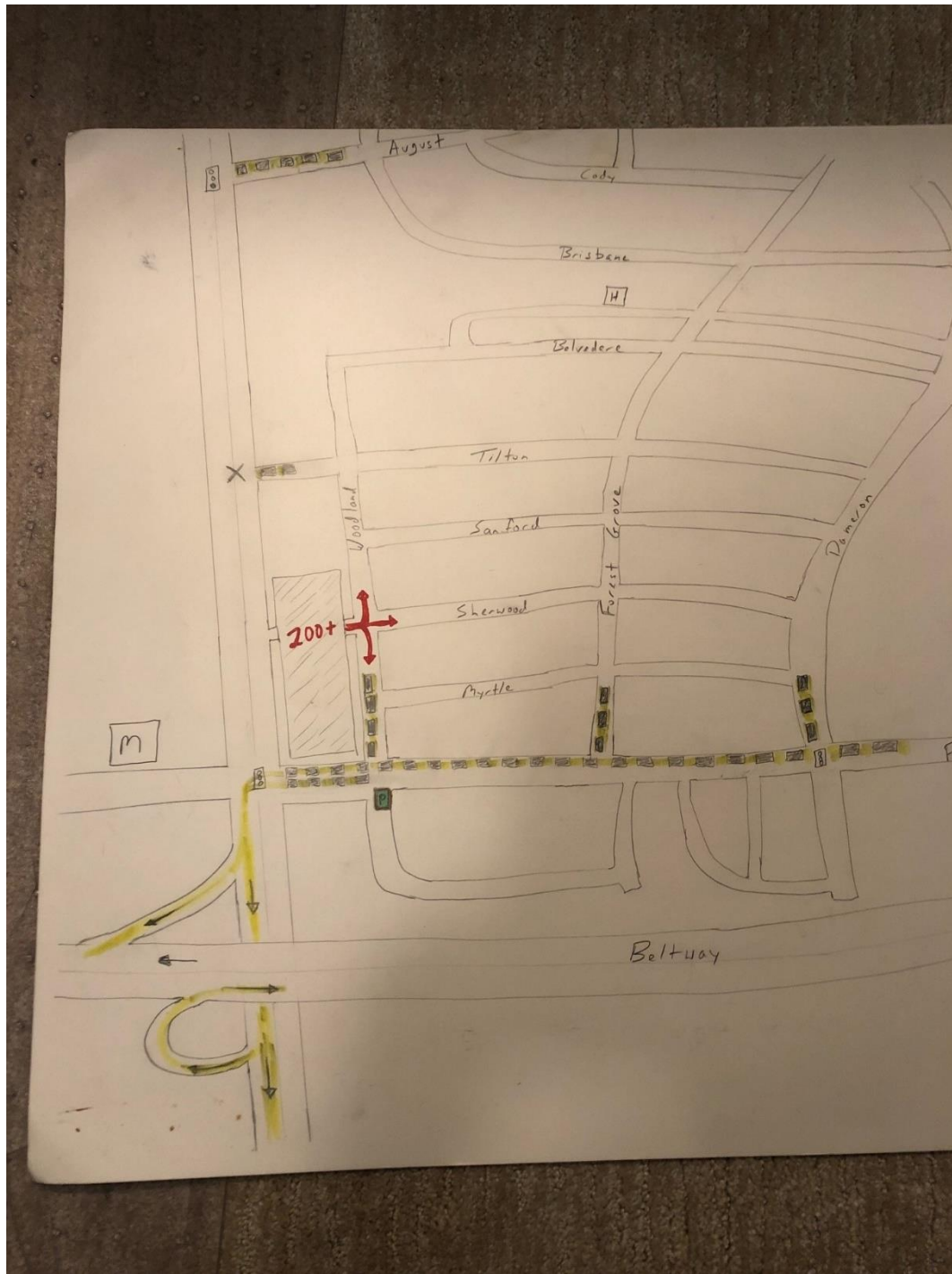
I hope that the members of this committee will take these concerns to heart and work with our neighborhood to get a fair assessment. I ask you to put yourself in our shoes – would you want an increased traffic load like the one discussed here to be thrust upon your neighborhood?

Please feel free to reach out to me to discuss this issue further at your convenience.

Regards,

Phil Jakobsberg

This drawing below illustrates the current traffic at 8AM. The routes out of our neighborhood are shown in yellow. Georgia Avenue is shown running North/South and Forest Glen Road East/West. Note the traffic backup past Dameron. Imagine the addition of 150-200 cars leaving the facility on the corner of Georgia and Forest Glen for a southbound destination. All entrances out of our neighborhood are likely to become gridlocked.



TECHNICAL MEMORANDUM

To: Chairwoman Lesley Lopez and Representatives Development Review Process Workgroup

Cc: Meredith Wellington Montgomery County Executive's Office
Robert Kronenberg Montgomery Planning

From: Maribel Wong
Will Zeid, P.E.
Katie Wagner, P.E., PTOE

Date: August 30, 2023

Subject: Development Review Process Input

Introduction

We appreciate the opportunity to provide our insights regarding the development review process in Montgomery County. As transportation professionals serving clients for over 40 years in the Washington, D.C. metropolitan area and suburban Maryland, we are fully engaged in the development review process working closely with Planning and Montgomery County Department of Transportation (MCDOT) Staff and other stakeholders to advance a diverse range of land use development from mixed-use to biomedical and institutional projects.

The collaborative initiative undertaken by the Montgomery County Planning Department, the Montgomery County Executive, and the Montgomery County House of Delegates Delegation to enhance the development review process underscores the County's commitment to fostering balanced growth and development within our community. As dedicated participants in this process, we would like to highlight several key points that merit careful consideration for a more efficient and effective development review process:

Review Timelines and SHA Engagement

We appreciate the importance of engaging the Maryland State Highway Administration (SHA) in the development review process and aligning SHA's review timeline with the Development Review Committee (DRC) 30-day review period would facilitate a synchronized more effective review process that provides County Staff and applicants opportunities to discuss and address review comments in a timely manner.

SHA's review timeline oftentimes exceeds a 45-day review period that includes multiple rounds of comments. We continue to have concerns that SHA's review comments and the inability to resolve comments within the Code-mandated 120-day timeline often result in undue delays for applicants.

SHA Review and APF Requirements

Aligning SHA's review methodology with the methodology required to meet the County's Adequate Public Facilities (APF) findings is essential to avoid conflicting requirements and to streamline the review process. SHA's feedback provides valuable insights that can lead to more comprehensive analyses associated with proposed developments. This aspect should not be overlooked, as it contributes to a more holistic understanding of the potential impacts of a project on the surrounding roadways. However, SHA review comments occasionally diverge from the Local Area Transportation Review (LATR) Guidelines which creates discrepancies and unpredictability in the scope of review between M-NCPPC, MCDOT, and SHA.

Offering SHA the opportunity to submit a courtesy review that mirrors their requirements at the access permit stage is a practical solution. It is crucial, however, that only comments based on the LATR Guidelines requirements and that significantly affect analysis results are issued as part of the development review process. SHA's focused and timely collaboration with the applicant team to resolve comments promptly is also paramount to avoid prolonged review cycles and delay approval.

Traffic Study Technical Guidelines and Clear Parameters

Establishing clear technical guidelines for software analysis parameters at both the County and State levels is fundamental for a streamlined, consistent, and transparent review process.

Traffic studies in Montgomery County are prepared in accordance with the LATR Guidelines. SHA frequently requires queueing analyses and microsimulations, and published guidelines or analysis parameters are not available at the State or County level.

MCDOT as the Lead Agency on Traffic Study Review

Development projects are required to implement Complete Streets and Vision Zero principles and advance County initiatives in the multi-modal transportation networks. These principles and initiatives can be incongruent with SHA's focus on maximizing vehicular capacity and minimizing vehicular congestion.

Recognizing the expertise of the Montgomery County Department of Transportation (MCDOT) in managing the County's signalized corridors and MCDOT's understanding of County Master Plans and multi-modal initiatives is a step toward a well-rounded and more streamlined review process.

In conclusion, your dedication to improving the development review process is greatly appreciated, and we are confident that our insights, alongside those of other stakeholders, will lead to a more efficient, transparent, and economically competitive review process. We appreciate your time and consideration of our recommendations. We look forward to the positive outcomes of your workgroup's efforts and look forward to the opportunity for further engagement to ensure the success of this endeavor.

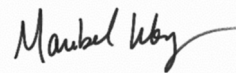
Sincerely,



Katie L. Wagner, PE, PTOE
Principal



William L. Zeid, PE
Senior Associate



Maribel Wong
Project Manager



August 31, 2023

By E-Mail

Delegate Lesley J. Lopez
and Members of the Development Review Process Workgroup

Re: Development Review Process Workgroup

Dear Delegate Lopez and Members of the Development Review Process Workgroup:

The attorneys of Miles & Stockbridge P.C.'s land use/zoning practice group in Rockville (the "Miles Group") wish to supplement their July 12, 2023 letter to the Development Review Process Workgroup (the "Workgroup"). We have closely followed the Workgroup's August 8 and 24, 2023 meetings and the correspondence submitted to the Workgroup. The Miles Group would like to offer additional feedback, and in doing so concurs with the written comments of the Maryland Building Industry Association ("MBIA"), the DC/MD Chapter of NAIOP (Commercial Real Estate Development Association), and Lerch, Early & Brewer's land use practice group.

The Miles Group also wants to express its support for Bill 18-23 proposing to replace the Office of the People's Counsel with a Community Zoning and Land Use Resource Office. Additionally, the Miles Group would like to comment on the importance of maintaining the independence of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") from the executive branch of Montgomery County, Maryland (the "County") government.

Feedback on August 2023 Workgroup Meetings

Timeline for Review of Traffic Studies

The Miles Group appreciates the Workgroup's efforts to align the State Highway Administration's review timeline for traffic studies with the County's review timeline as a commonsense way to streamline the development review process. As part of this process, we respectfully encourage the Workgroup to reach out to traffic engineers to ensure their technical expertise is taken into account. Legislative and regulatory changes are being considered as potential solutions, and

the Workgroup would greatly benefit from the participation of experienced traffic engineering professionals who prepare traffic studies and practice their craft in the County.

Plats

In its previous letter, the Miles Group proposed several changes to the Land Use (“LU”) Article of the Maryland Code and Chapter 50 of the County Code (the “Subdivision Regulations”) that would harmonize certain County plat practices with surrounding jurisdictions. The Miles Group appreciates the Workgroup’s sincere consideration of these ideas, as well as its support for additional concurrent review processes and conditional approval for record plats.

Specifically, the Miles Group supports the Workgroup’s consensus to allow the Planning Director to approve plats for minor subdivisions, which is currently the practice in Prince George’s County. *See* LU §§ 23-102(b) & 23-206. The Miles Group would like to advocate again for the Workgroup to support expanding the minor subdivision eligibility to allow the conversion of a *part* of an outlot into a lot,¹ allow an applicant to use the minor subdivision process when combining more than one type of minor subdivision would result in the creation of a legal lot,² and analyze how the County can overcome its hesitancy to allow ownership plats when they are routinely approved in nearby jurisdictions. With respect to the latter, issues that were raised during the August 8 discussion regarding utilities, fire access, and vehicular circulation are regularly handled by jurisdictions that approve ownership plats with greater frequency through staff review of relevant sections of private agreements. The Miles Group observes this topic is relevant to the Workgroup’s discussion as ownership plats are classified as a minor subdivision under the Subdivision Regulations. *See* § 7.1.E of the Subdivision Regulations. As such, the Workgroup should address this now to help the County be more competitive with its neighbors.

¹ Presently, the Subdivision Regulations only permit the conversion of an outlot into a lot, and not a part of an outlot into a lot. *See* § 7.1.B of the Subdivision Regulations.

² If an applicant seeks to create a new lot through the combination of more than one type of minor subdivision, current interpretation requires the applicant to meet all eligibility criteria for each type at the same time. An example is illustrative. An applicant could not create a new lot by converting an outlot into a lot (one type of minor subdivision) and then consolidating that converted outlot with adjoining abandoned right-of-way (another type of minor subdivision) because the converted outlot did not initially have the required street frontage *even when the ultimate consolidation would result in the proposed lot having the required frontage*. The Subdivision Regulations should be interpreted in a more flexible manner that would allow using the minor subdivision process with more than one type of minor subdivision when the combination would result in a legal lot.

Additionally, the Miles Group concurs with comments made to the Workgroup proposing the relevant review agencies identify all current prerequisites for record plat approval and consider whether they are necessary before the permitting stage of development review. This includes, but is not limited to, the current requirement to file permits to bond certain transportation improvements prior to plat approval. Requiring applicants to prepare entirely new sets of technically engineered drawings, file permit applications, and post bonds can significantly delay the plat review process, involve the expenditure of considerable resources, and constitute a significant hardship.

The Miles Group suggests that if the Workgroup maintains the current practice of requiring applicants to bond right-of-way improvements before a plat can be approved, then DPS should allow applicants to calculate the bond amount based on the plans and drawings already reviewed, approved, and included in the certified plan set(s). To accompany this change, DPS should also prepare an estimated construction cost for each County standard road cross-section on a per linear foot basis. An applicant should be able to calculate the bond amount during plat review without having to submit all of the plans associated with a right-of-way permit. These two sensible steps would reduce regulatory burdens on applicants and greatly streamline the plat review process.

Although the use of electronic signatures on plats may expedite review, we request the Workgroup also recommend reducing the number of signatures currently required under State law and regulation. For example, LU § 23-102(a)(1) requires all plats in Montgomery and Prince George's Counties to be signed by both the Chair of the Planning Board and M-NCPPC's Secretary-Treasurer. As the Planning Board is the approving authority in the County for record plats, a signature from the Secretary-Treasurer seems overly formalistic. Additionally, M-NCPPC, rather than DPS, should serve as the Maryland Department of the Environment's designee under State regulations. See COMAR 26.04.03.02.K. This seems reasonable, as the adequacy of water and sanitary service are routinely confirmed during the regulatory review process. See § 4.3.J of the Subdivision Regulations. In short, paring down the number of required plat signatories is another substantive way to streamline the plat review process.

Notice

The Miles Group believes robust public participation is fundamental to the County's development review process. We observe both Chapter 59 of the County

Code (the “Zoning Ordinance”) and the Subdivision Regulations currently incorporate comprehensive notice standards and specifications. See § 7.5 of the Zoning Ordinance; § 4.1.E; 5.2.B; 6.3.B.1 of the Subdivision Regulations. The Miles Group encourages the Workgroup to consider ways to modernize notice requirements through the use of technology and allow parties to receive electronic notice in lieu of mailed notice.³ As noted during the August 8 discussion, it is important to remember mailed notice is also supplemented by posting the property with signs advertising pre-application community meetings and filed development applications.

Support for Bill 18-23

The Miles Group acknowledges the County’s development review process can be complicated. Thus, we support the proposal in Bill 18-23 (introduced on March 28, 2023) to replace the People’s Counsel with a Community Zoning and Land Use Resource Officer who would be informed on County land use, provide public information on development applications to interested parties, and identify the numerous opportunities for individuals and groups to participate in the development review process. This office would supplement the extensive public resources that currently exist today, including the Planning Department’s Information Counter, DPS’ Customer Support and Outreach Division, the staff of the County’s Office of Zoning and Administrative Hearings and Board of Appeals, as well as the offices of the County Councilmembers (seven of whom serve councilmanic districts and four of whom sit at-large).

As noted by County Council staff, Bill 18-23 addresses many issues related to the Office of the People’s Counsel that were identified in a June 2008 report written by the County’s Office of Legislative Oversight. See County Council Staff Report – Bill 18-23, Structure of County Government – Community Zoning and Land Use Resource Office, pg. 1 (Apr. 13, 2023).⁴ We believe this legislation appropriately

³ For background, compliance with current mail notice requirements for pre-application meetings involves preparing lengthy lists from tax records (which are only valid for 30 days), photocopying invitation letters, assembling envelopes, and paying postage. For mailings notifying the filing of a development application, applicants must take these same steps while also making hundreds of photocopies of notice letters, an eight-page Planning Department brochure (electronically available on M-NCPPC’s website), and plan drawings (electronically posted on the Development Information Activity Center after plan acceptance). A significant number of notice mailings are routinely returned to the sender, and it is unknown how many additional notice mailings sit unopened in mailboxes or thrown away without being read. Although applicants have honored a party of record’s preference for electronic notice, applicants are still required to send a party mailed notice as well.

⁴ See https://apps.montgomerycountymd.gov/cclims/DownloadFilePage?FileName=2793_1_24937_Bill_18-23_Publichearing_20230418.pdf, pg. ©9.

balances the need to provide reliable and independent land use information to the public with other important County policy goals, such as streamlining development and encouraging growth.

A People's Counsel employed in either County or State government who is authorized with broad discretion to decide in which cases to participate based a subjective notion of "public interest" raises several concerns. For example, there has been confusion and misaligned expectations regarding who the People's Counsel represents, how the People's Counsel decides to participate in certain land use proceedings, what role the People's Counsel has in those proceedings, what position he or she takes (e.g., in support, in opposition, or neutral), and whether he or she decides to file appeals. Authorizing a People's Counsel to take part in proceedings would likely add time and expense to conduct hearings. The participation of the People's Counsel could also potentially compromise essential projects solely for the appearance of "balance," thereby undermining other important public objectives (including developing additional housing to meet demand). As such, the Miles Group believes replacing the Office of the People's Counsel with a Community Zoning and Land Use Resource Office is preferable.

Maintain M-NCPPC's Independence

The Miles Group strongly supports preserving the independence of M-NCPPC and would strenuously disagree with transferring its duties to the executive branch of County government. M-NCPPC's status as a bi-county state agency, with its five commissioners from the County sitting as the Montgomery County Planning Board, allows for a comprehensive and collaborative approach to development review that is more insulated from political influence and better protected from parochial decision making. Removing the County from M-NCPPC would cause unnecessary disruption, needlessly introduce considerable uncertainty for M-NCPPC staff and the development community, and result in the inevitable loss of institutional expertise. The Miles Group believes the Workgroup's resources are better focused on streamlining development review, including identifying potential overlap with County staff and M-NCPPC staff on matters such as transportation and the environment, as well as possible duplication among the County agencies themselves (e.g., between the County's Department of Transportation and Department of Permitting Services on transportation review).

No persuasive justification has been identified to support shifting M-NCPPC's authority to the County's executive branch. Although it is true M-NCPPC was first established almost 100 years ago, the agency has continuously evolved since that

time. For example, M-NCPPC commissioners were initially chosen by the Governor of Maryland, with planning and zoning authority shared between M-NCPPC and the legislatures of Prince George's County and Montgomery County. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 523 n. 29 (2015). Subsequent modifications gave the two county councils (each sitting as the "District Council" for its portion of the Maryland-Washington Regional District) primary legislative authority to select the five M-NCPPC commissioners who sit on the respective planning board, establish procedures for the planning process, adopt historic preservation laws, and exercise approval authority over master plans, zoning ordinances, subdivision regulations, and zoning maps (as well as amendments to the same). LU §§ 15-102; 15-103(a); 15-104; 21-105; 21-106; 21-108; 21-212; 22-104; 22-109; 22-201; 22-206; 22-209; 23-104. The geographic jurisdiction of M-NCPPC has also expanded over the years, from roughly the area between the District of Columbia and what is now the Capital Beltway, to the vast majority of Montgomery County and Prince George's County (with certain exceptions for some municipalities). *Zimmer*, 444 Md. At 523 n. 29.

Some have questioned whether a bi-county state agency should exercise certain land use authority within the County. In response, the Miles Group observes the County benefits from M-NCPPC's regional perspective on complex issues related to land development that are not cleanly confined to jurisdictional boundaries (such as transportation, environmental conservation, and housing affordability). Rather than create unnecessary duplication, the structure and approach of M-NCPPC facilitates a thoughtful approach to complex regional concerns by considering an application's compliance with numerous comprehensive plans, functional master plans, and design guidelines. When combined with the expertise of the County's executive branch agencies, other state agencies, and public utility companies, the development review process thoughtfully balances the details of specific development applications with the potential impacts to the wider Maryland-Washington Regional District. In contrast, concentrating planning and zoning authority within the executive branch of County government presents concerns of unpredictable swings in policies caused by frequent changes in administration/agency directors, as well as the potential influence of political pressure on decisions that depart from established precedent. Furthermore, intercounty and regional agencies are by no means novel throughout the State of Maryland.⁵

⁵ The Maryland Manual On-Line lists sixteen such agencies other than M-NCPPC within Maryland: the Additive Manufacturing Partnership of Maryland, Regional, the Baltimore Metropolitan Council, the Baltimore Regional Transportation Board, the Mid-Shore Regional Council, the National Capital Region Emergency Preparedness Council, the National Capital Region Transportation Planning Board, the Northeast Maryland Waste Disposal Authority, the Southern Maryland Agricultural

Another criticism posits M-NCPPC's status as a bi-county state agency precludes proper oversight. This assertion is without merit as there are both effective internal and external controls to ensure proper governance. Budgets are approved by the County Council, which can be vetoed by the County Executive (and overridden by the County Council). LU §§ 18-106; 18-108. The five M-NCPPC commissioners from the County who comprise the Planning Board are appointed by the County Council after interviews and financial disclosures, subject to the approval of the County Executive. LU §§ 15-102; 15-103; 15-104. The County's M-NCPPC commissioners are limited by state law from serving three consecutive full terms. LU § 15-102(d)(6). The County Council, with the approval of the County Executive, is also authorized to designate a commissioner for the position of chair or vice chair. LU § 15-106. Additionally, the County Council may remove any commissioner before the expiration of a term after a public hearing. § 15-105. Importantly, the County Council retains final authority for approving master plans, setting procedures for the review of master plans, adopting changes to zoning and subdivision regulations, enacting laws on historic preservation, setting the County's growth and infrastructure policy, and granting zoning map amendments. LU §§ 21-105; 21-212; 22-104; 22-107; 22-108; 23-104; Chapter 33A of the County Code.

Internally, state law prohibits conflict of interest for M-NCPPC's commissioners, including restrictions on participation, employment, representation, solicitation/acceptance of gifts, disclosure/use of confidential information, and improper influence of County or State officials. LU § 15-120. Violations of these provisions can result in imprisonment, fines, suspensions, and removal from office. LU § 15-120(h). M-NCPPC also has an audit committee to review issues of agency management and accounting, as well as an Office of Inspector General authorized to report any allegations of legal violations to an appropriate law enforcement agency, the State Ethics Commission, or any other agency with proper jurisdiction. LU §§ 15-401 – 15-405; 15-501 – 15-508.

Any concern that M-NCPPC's authority should be transferred to County government because the County is ultimately responsible for plan implementation is also unwarranted. Although County government issues building permits and enforces the County's Zoning Ordinance, state law requires all building permit

Development Commission, the Tri-County Council for the Lower Eastern Shore of Maryland, the Tri-County Council for Southern Maryland, the Tri-County Council for Western Maryland, the Upper Potomac River Commission, the Upper Shore Regional Council, the Washington Suburban Sanitary Commission, the Washington Suburban Transit Commission, and the Water/Wastewater Agency Response Network, Maryland. See <https://msa.maryland.gov/msa/mdmanual/35interc/00list.html>.

applications be referred to M-NCPPC for review and recommendation as to zoning requirements. LU § 20-503(b). The Planning Board has considerable authority when it comes to ensuring applicants comply with its development approvals. For any development requiring site plan approval, the County cannot issue a sediment control permit, building permit, or use and occupancy permit unless the Planning Board has approved the site plan, a bond has been posted, and the proposed building, structure, or improvement satisfies the certified site plan and conditions of approval of the Planning Board's decisions. § 7.3.4.G.1 of the Zoning Ordinance.

If, after a public hearing, the Planning Board finds a property under development is not in compliance with a certified site plan, it may, among other options, impose a civil fine or administrative penalty, or suspend or revoke site plan approval. § 7.3.4.K.1 of the Zoning Ordinance. If the Planning Board suspends or revokes a site plan, the County must then immediately suspend any applicable building permit or withhold any use and occupancy permit until the site plan is reinstated, or a new site plan is approved. § 7.3.4.K.2 of the Zoning Ordinance. Under the County Code, the Planning Board also has primary enforcement authority over the County's Forest Conservation Law and is empowered to hold enforcement hearings, impose administrative civil penalties, order corrective actions, require the payment of civil fines, ordering compliance with corrective action orders, and any other action authorized by law. § 22A-16 of the County Code. Moreover, M-NCPPC is authorized to acquire (by purchase or condemnation) property for parks, open space preservation, and recreation centers. LU § 17-101; 17-108.

As a practical matter, there has already been unsuccessful experimentation with transferring authority from M-NCPPC to County government. In a chart of 2023 local and bi-county bills dated December 12, 2022, County Council staff observed certain planning processes have been shifted in the past, with the County Executive receiving authority in 1986 to appoint the Planning Board and Chair. County Council Staff Report – 2023 State Legislative Session Review of Montgomery County Local and Bi-County Bills, Cont'd, pg. ©5-©6 (Dec. 12, 2022).⁶ Just five years later, a task force recommended restoring the previous appointment and planning processes. *Id.*

In sum, M-NCPPC's separation from County government promotes regulatory stability, a respect for administrative precedent, the examination of issues from a regional perspective through master plan compliance, and the consolidation of subject matter expertise in a variety of disciplines within a single administrative agency. Transferring M-NCPPC's authority to County government and/or removing the

⁶ See https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221212/20221212_1.pdf

Delegate Lesley J. Lopez
and Members of the Development
Review Process Workgroup
August 31, 2023
Page 9 of 9



County from M-NCPPC's jurisdiction is a solution in search of a problem. Therefore, the Miles Group firmly suggests the Workgroup uphold M-NCPPC's independent role in the development review process.

We sincerely appreciate the Workgroup's hard work and transparency. Thank you for your consideration of our comments and we look forward to monitoring future Workgroup discussion.

Sincerely,

MILES & STOCKBRIDGE P.C.

Casey L. Cirner / By: PAH

Casey L. Cirner

Erin E. Girard / By: PAH

Erin E. Girard

Phillip A. Hummel

Phillip A. Hummel

Scott C. Wallace / By: PAH

Scott C. Wallace

From: digitalteam@montgomeryplanning.org
To: [MC-Development](#)
Subject: New submission from Development Review Process Feedback
Date: Thursday, August 31, 2023 2:31:07 PM

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Name

Royce Hanson

Email

oldroyce31@gmail.com

ZIP Code

20886

Comment

The Honorable Lesley Lopez
Chair, Development Review Process Workgroup

Dear Delegate Lopez and Members of the Workgroup:

I understand you may be near the time to make recommendations for improving the development review process. I offer a few observations that I hope will be useful in your endeavor. They are based on having chaired the planning board on two occasions, for a total of 15 years separated by about 25 years, and a longer period as a researcher and professor of urban and metropolitan affairs. As I discuss below: 1) Montgomery County's development review process, examined in its entirety (including zoning and permitting) is not significantly different in the total amount of time consumed than surrounding jurisdictions and it has generally produced good outcomes. 2) There are distinct advantages in the autonomy of the Planning Board as a component of the Maryland-National Capital Park and Planning Commission in terms of the transparency, accountability to the elected council, and professional integrity of planning and regulation of development; opportunity for innovation in land use policy that has earned it a national reputation for excellence; and insulation from political corruption.

First, the Montgomery County development review process, which is the link between planning and development, has a reputation of being professional, non-political, transparent and conducted with integrity. There have been hiccups from time to time, but they have always been addressed with dispatch. The principal complaint, which has not changed in decades, is that project approval takes too long. Like beauty, that is in the eye of the beholder. Some perspective may be helpful in thinking about it, and solving parts that can be solved. Fairfax is the usual comparison, where subdivision approval is essentially a ministerial action conducted by a single employee because all of the elements of scale, location, landscaping, access, etc. have been determined in the rezoning process, which typically takes a year or more, in which the applicant makes a proffer of public benefits and design. This process, which would be considered conditional zoning and illegal in Maryland, tends to be quite political in character and a project is approved when it has satisfied the supervisor in whose district it is located. In contrast, most zoning in Montgomery County is accomplished by sectional map amendment and there are relatively few local zoning map amendments required before developers can proceed using a standard, "by right" method or an optional method that requires a sketch and development plan to be submitted, often simultaneously with a subdivision application and site plan. This process takes about the same time as a rezoning in Fairfax. Local rezoning in Montgomery—when done, usually involves a floating zone—has been since the late 1960s, a quasi-judicial process before a hearing examiner.

Historically, delays in the subdivision review process had two principal causes: (1) receiving recommendations or sign-off from operating agencies, and (2) response from applicant's consultants to recommendations from the DRC. The first of these problems has been addressed by changing, in about 2009 or 2010, from circulating paper plans among agencies to the use of electronic documents, and by council legislation (of dubious utility) designating final decision authority for specific elements of a plan to the appropriate operating agency. I say this was of dubious utility because the nature of a subdivision plan involves negotiation and compromise among its component parts to achieve a coherent whole. That is because strict adherence to the preferences of each agency inevitably produces conflict with the preferences of another. My view is that if the matter cannot be worked out among the agency representatives, the developer, and planning staff at DRC, that is what the Board is for, and to do its job it should not be required to accept one agency's insistence as the one and only way. I have seen too many cases in which a plan can be improved by finding a solution that fits the problem rather than creating a problem to fit the solution. Leaving the DRC led by the planning staff and final decisions on subdivisions and site plans with the Board is more important now that most new development in the county will be urban, diverse, and dense. That means attention to urban design and to the public realm will be of central importance to the quality of life of the residents of and workers in the finished project, and to the county and its people. You have received some thoughtful suggestions for technical and timing improvements in the development review process. I would recommend distinguishing those that can and should be adopted by Planning Board regulations and the relatively few that may require legislation by the Council of the general Assembly.

Second, I understand the county executive and some others may propose that the planning department or some part of the planning and development review process be dismembered from the Commission and given to the executive branch. This is not a new bad idea. I shall not belabor all of the technical and legal difficulties of unscrambling an egg but deal with the policy and political reasons prevailing against it. One of the historical advantages of the autonomy of the planning board is that it has encouraged innovation and the freedom to bring to the Council ideas that it did not ask for and to think free of political constraint to anticipate and consider how to resolve problems. At the same time, the Council's power to set the work program and budget of the board and to exercise oversight and final approval of its work and recommendations provides a high level of accountability. Examples of prominent policies originated by the board include the 1964 and 2022 General Plans, the Agricultural Reserve, the Historic Sites Master Plan and Commission, the Optional Method of Development, the Revision of the Zoning Ordinance, the CR family of zones, Advanced Land Acquisition, The Adequate Public Facilities Ordinance, County Growth Policy, and Legacy Open Space. A substantial number of these policies were opposed by the County Executive in office when they were proposed, which suggests a strong likelihood they would not have happened. County Executives, by the nature of the office, are prisoners of their in-boxes and their vision, at its extreme horizon, tends to be limited to four years. The one major experiment, from 1986 to 1990, in granting the executive authority to appoint two planning board members and revise master plans before submitting them to Council was a disaster for both planning and for the incumbent executive. The General Assembly reversed the law and returned the appointment power to the Council and limited the executive to review and comment on plans.

Land use policy, because it is central to the political economy of the county, can be susceptible to corruption. The best prophylactic against that civic disease is transparency and a requirement for open deliberation. With five planning board members, no more than three of whom can belong to the same political party, and an eleven member council with ultimate responsibility for planning, there is a strong guarantee of transparency. In addition to the open meetings law, the sheer number of members with diverse constituencies and backgrounds makes keeping a secret virtually impossible.

One of the reasons executives covet land use power is because it makes it possible for them to create a governing alliance with the most important private sector political force in the county. It was concern for this potential that caused the Charter Committee in 1968 to insist that the planning power remain subordinate to the Council when we moved from the unitary Council-Manager system to the separation of powers system of Elected Executive-Council government we now have.

I hope these observations may be helpful. Some of them are more expansively treated in *Suburb: Planning Politics and the Public Interest* (Cornell University Press, 2017), which describes the planning and development of the County since 1920.

This workgroup's focus on streamlining the development process must result in major improvements that strengthen community and stakeholder input. Doing so requires policies that ensure completeness and accuracy of developer applications being submitted to the Montgomery County Planning Department. The public meetings held on June 22, 2023, July 18, 2023, and August 2, 2023, highlight an immediate need exists for mandatory training for all personnel (e.g., developer staff and contractors submitting designs and justifications to be reviewed by the Planning Department). This mandatory training should be required prior to a Mandatory Referral application being accepted by the Intake Division of the Planning Department for review. It is recommended that the mandatory training be online and include testing, setting a threshold for a passing grade, and the obtainment of a training certificate that shows the length of time the certificate is valid (e.g., three to five years).

As discussed in the workgroup meetings, the Mandatory Referral application submission requirements are not being met but are being accepted by the Planning Department. This results in the onus of a complete application being placed on the Planning Department to obtain required information. This management decision and approach minimizes the important role that the Planning Department staff plays with regard to land use. It decreases to a great extent communities' confidence with regard to Mandatory Referral process and Montgomery County's ongoing economic development. Also, incomplete applications disadvantage neighboring communities, who might not receive notice and correct information in time to respond.

My personal community experience with the mandatory referral process has highlighted several issues and demonstrated a lack of due diligence by the developer who in this case is the Montgomery County Public Schools (MCPS). The submissions made by MCPS lacked not only noncompliance with required public noticing under the Code of Montgomery County Regulations (COMCOR), but their submissions were also missing required elements/information for the Woodward High School for Phase Two Mandatory Referral. It is important to note that the Planning Department staff agreed with my assessment that the COMCOR noticing requirements were not met and acknowledged that their submittals had missing information. Furthermore, I was orally informed that required noticing would be obtained "after the fact." Please Note: the 60 day timeframe for this Mandatory Referral was extended due to the Planning Board's recess in August. This may be a reason that a decision was made by the Planning Department to go back to MCPS to obtain the required noticing for the community. MCPS' Woodward notice to the community included an incorrect description of the process (it incorrectly stated that the plan would be handled administratively instead of going before the Planning Board) and an incorrect due date for responses, both of which could dissuade community response.

Montgomery Planning guidance materials for applicants and community members recognize the role that staff has in working with applicants and neighbors to address issues of concern before the Planning Board reviews applications. To ensure that community members have the ability to adequately engage, the Mandatory Referral application checklist provides detailed information on what is required for proper notice for community members. Community

members' ability to engage and have concerns addressed, as well as the underlying Mandatory Referral process, are significantly harmed when there is a failure to provide community members with required notice.

The notice requirements allow community members to know that an application has been submitted and that the Planning Board will need to review and take action on an application within 60 days. The Montgomery Planning brochure provides tips to support community engagement and highlights the importance of being on the lookout for notices of development applications, including signs and notifications by mail. This notice is important in that the application checklist prescribes exactly what is required and Montgomery Planning even provides a template letter that can be used to provide community members with notice. However, the absence of proper notice derails the process and hurts community members' opportunity to engage within the limited 60 day window placed before the Planning Board to review an application, as well as the Montgomery Planning staffs' ability to effectively work with an applicant and community members to resolve concerns about an application.

Furthermore, as a retired federal worker, my experience is that compliance with a regulation is not discretionary. Remedies for noncompliance are provided in the regulations and these requirements must be met. The Woodward High School Phase Two Mandatory Referral "after the fact" *compliance* is questionable and a management practice that does not appear to be supported in the COMCOR. Additionally, MCPS did not provide the required noticing for Woodward High School for the Mandatory Referral for Phase One and did not have an approved Stormwater Management Plan when the application and submissions were brought forward in the Planning Board hearing. The lack of due diligence and compliance to the Mandatory Referral Process for both MCPS' Phase One and Phase Two submittals to the Planning Department have a real impact on the surrounding community, while appearing to have no consequences for MCPS. Based on my experience with Phase One and now Phase Two, future MCPS Mandatory Referral submissions will most likely continue to have issues unless improvements are made to the Planning Development Review process and the Intake Division current process. Note: Similar submittal issues appear to occur with private developers with no consequences and increased work for the Planning staff.

It is very disturbing that other local and state agencies are faced with applications and associated submittals with missing and/or incomplete information. It is particularly egregious given the Planning Department's Development Review process conducted prior to an official submission being made by the developer. It shifts responsibility from the developer to others to complete an application within the mandatory referral 60 day timeframe. It diminishes important functions and roles in the mandatory referral process. It appears to me that the 60 day timeframe did not take into account issues with incomplete and missing information upon acceptance. The 60 day timeframe should be automatically increased to 90 days for applications found to be incomplete after acceptance by the Planning Department. This would strengthen not weaken the Development Review process which does not appear to me to be meeting its intended objectives.

Shortening timeframes without addressing fundamental flaws in the Mandatory Referral submission processes to include the development review will result in the further degradation and noncompliance with COMCOR and other necessary regulations.

At a minimum funding for mandatory training for developers and their staff responsible for mandatory referral submissions will result in compliance, improved performance and provide for an increased level of confidence in the process from those involved and/or impacted by future economic development throughout Montgomery County. Additionally, after action reports should be required from Planning Department Lead Reviewers of mandatory reviews. These reports would to be submitted to the Planning Director or Deputy and would address issues that require new and/or updated regulations for climate change, noise control, etc., and that these issues are elevated by the Director of Planning to appropriate elected officials to ensure proper governance and oversight and most importantly the necessary legislative changes required for future economic development within Montgomery County. These reforms are necessary to bolster Montgomery County residents trust in the Planning Department and Montgomery County government processes.

Respectfully Submitted,

Jane Cunningham
President, Devonshire East Condominium Association
11102 Cedarwood Drive
North Bethesda, Maryland 20852
240-460-9478

Balmer, Emily

From: Naomi Spinrad <nspinrad@gmail.com>
Sent: Friday, September 1, 2023 3:15 PM
To: MC-Development; Wellington, Meredith
Subject: Comments for Development Review Process Work Group

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Members of the Development Review Process Work Group:

Thank you for this opportunity to voice my thoughts on the development review process. I am a resident of Chevy Chase West, a former officer of the Chevy Chase West Neighborhood Association, a current member of the Bethesda Downtown Implementation Advisory Committee, and an active County resident for the past 20 years.

I would like to focus on the importance of public input, followed by some additional brief comments on other aspects of your review.

Public Input

I urge you not to limit public engagement in the development review process, as some here and in the larger world are arguing. Aside from the fact that reducing public input is primarily a characteristic of authoritarian regimes, and directly counter to the democratic processes that guide our county, there are compelling operational reasons to foster early, healthy discussion among the variety of stakeholders.

1. A year ago time and money were spent broadening outreach to - and attempting to broaden engagement with - underserved communities, of color and/or low income. Why? Because of multiple complaints that while Thrive Montgomery 2050 was considered, these residents had not been adequately represented. Those who would limit or even eliminate public input missed the lessons: **Reduced public input fails to build support for a proposal and risks exacerbating the disparity in social justice and racial equity that already exists in the county, and that the county is trying to remedy.**

2. Democracy is built on dialog; respect for laws, regulations, and norms, and the ways in which these may be challenged; and seeking compromise. **Opportunities for public input should be made available early in the development review process, so that potential areas of agreement can be identified and participants can focus on resolving any problems.**

3. Public input is often necessary to identify cumulative impacts to infrastructure from multiple developments. Whether it is traffic, water pressure, or school seats, there is a role for public input in ensuring that new developments do not overtax public facilities. There must be appropriate balance between existing structures/residents/businesses and new development. Adverse effects on existing development as a result of entitlements for new development should be as limited as possible. **Existing residents and commercial occupants have first-hand knowledge about how local infrastructure actually performs, and any concerns about infrastructure adequacy must be considered early.** (For example, the Bethesda Downtown Master Plan has been very successful in generating development, but progress in providing green space - the primary "overarching goal" - has lagged far behind.)

4. **Staff and the Planning Board must be willing and able to explain to the community why they are supporting or approving development that is problematic for the community. Failing to do so diminishes the legitimacy of your organizations.**

5. In contrast to the County Executive and the Council, the unelected Planning Board's immediate constituency is only those seeking its approval for some form of development or change to a community. Citizen involvement in master plans is unquestioned, but what master plans envision is governed by zoning and the zoning code. These

provide for options, incentives, and variances. Any code is created in a particular context: the zoning code revision in 2014 was a response to changes since the previous code, on the ground and in law, that needed to be addressed. **As long as there are choice points for officials, public input is a key ingredient in decision-making. Public input is key to achieving balance in new development and retaining and improving on whatever is there already that is good and desirable. This applies equally to well-to-do communities and those in danger of gentrification.**

Example: Two projects in my area were recently proposed fully formed without public input. Each came from Parks rather than Planning, but they could not have gone forward without Planning Board approval. Both (a dog park in Norwood Park in 2021-22 and a linear park on Little Falls Parkway 2022-23) were presented to nearby communities as faits accomplis and overwhelmingly opposed in every subsequent opportunity for public comment. Despite this, both were approved by the Planning Board. The community turned its efforts to the Council. The linear park proposal generated a petition opposing the park signed by nearly 5000 people to date, and more than 1000 emails to the Council over a single weekend. Both projects were effectively eliminated, at least for now, by the Council in budget votes. If you do not listen to the public, the public can turn to its elected officials and seek other ways to be heard.

On March 6, 2023 another Montgomery County resident and I met with then-Chair Jeffrey Zyontz, Parks Director Mike Riley, and Deputy Director Miti Figueredo. Among other things, **we asked why these two projects had been proposed without any prior community input. Mr. Riley stated that when Parks has gone to the community, a few residents who oppose everything “rile up” their civic associations and communities, implying that those in opposition have not independently thought through proposals and that comments in opposition reflect the views of an activist few.**

Even if this were true - and I believe most emphatically that it is not - such bureaucratic thinking cannot be allowed to undercut the county’s long-standing value of public participation. Early public input would have avoided prolonged contention that ultimately recognized the public concerns but cost Parks a great deal in time, energy, and good will. It is very important that our development review process not adopt the same attitude.

Other Issues

Many other points regarding the development review process have been raised in testimony and letters.

- 1.
- 2.
3. Planning Board agendas should be posted in a more timely manner
4. and changes published more clearly, perhaps at the top of the Board’s home page.
- 5.
- 6.
- 7.
8. Pre-application community meetings: if not organized and run
9. by planning staff, there should at least be a planning staff member present and accountable for incorporating the content of the meeting into the record for consideration as the development review process moves forward. My experience as an involved community
10. member is that some developers see this as simply a box to check off while others listen carefully and respond thoughtfully to community concerns. It is vital that staff and the Board have a more impartial source for what issues arose and how they were addressed
11. at community meetings.
- 12.
- 13.
- 14.
15. Do we still need a bi-county parent organization for the Montgomery
16. County planning and parks functions? Parks should be moved to the executive branch. More broadly, the current bi-county arrangement is severely deficient in terms of accountability and oversight. Neither the state nor the county seem to have authority to audit
17. M-NCPPC or to require M-NCPPC to enforce ethics standards, and as M-NCPPC consists of the members of the Montgomery County and Prince George’s planning boards it is clear from recent events that it is unable or uninterested in investigating or disciplining

18. its own members. A new body that serves only Montgomery County and that is accountable to the County ethics board and inspector general (as well as the Council and/or Executive) is needed.
- 19.

I would also like to state opposition to any proposal that leaves a decision requiring significant review to one person, whether the Planning Board chair or Planning Director (or Parks Director), or that removes participation of executive and independent agencies to DPS. Even with a corresponding transfer of knowledgeable personnel, such a change does not ensure the necessary level of expertise will endure in a new setting.

Thank you for your consideration of my comments.

Sincerely,
Naomi Spinrad