

MEMORANDUM OF UNDERSTANDING
BETWEEN THE MONTGOMERY COUNTY PLANNING BOARD
AND THE MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES

This Memorandum of Understanding (“MOU”) is entered into this 20th day of February 2020, between the Montgomery County Planning Board (“Planning Board”) and the Montgomery County Department of Permitting Services (“DPS”) with the acknowledgement of the Montgomery County Council (“County Council”).

WHEREAS, the Planning Board is charged with inspecting developments for compliance with Planning Board approvals including site plan amenities, height limits, setbacks and other development standards in site plan zones; and

WHEREAS, DPS is charged with inspecting developments for compliance with building permit approvals including height limits, setbacks and other development standards in zones that do not require a site plan; and

WHEREAS, the Planning Board and DPS (collectively referred to as “the Parties”) were directed by the County Council to enter into this MOU to provide clarity of responsibility and greater efficiency between DPS and the Planning Board for the inspection of developments for compliance with site plan approvals; and

WHEREAS, the County Council’s direction was a result of the findings of the Office of Legislative Oversight (“OLO”) in its Fact-Finding Review of the Clarksburg Town Center Project (Report Number 2006-3) and the County Council’s subsequent hearings on the adoption of a legislative package to address the OLO’s findings; and

WHEREAS, for developments that are subject to site plan approval, the intent of this MOU is to assign agency responsibility for 1) the review of building permit applications to ensure compliance with the certified site plan, 2) the inspection of developments under construction to ensure that the construction is proceeding in accordance with the certified site plan, and 3) the investigation of allegations of site plan violations raised by individuals, civic associations, homeowners associations, and others concerned that developments comply with certified site plans; and

WHEREAS, it is not the intent of this MOU to supersede the legally prescribed responsibility of the Planning Board to determine if a development is in compliance with the certified site plan nor to preclude the Planning Board from, among the other things, requiring a plan of compliance or a site plan amendment or assessing penalties against the site plan violators.

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein, including the foregoing recitals which are expressly made a part of this Memorandum, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and their successors and assigns hereby agree to the following terms, conditions, requirements, and limitations:

1. Definitions: The following terms as used in this MOU are defined as follows:

- a. **Commission:** The Maryland-National Capital Park and Planning Commission.
- b. **Commission Inspector:** An Inspector or Inspection Supervisor employed by the Commission.
- c. **DPS Director:** Director of Montgomery County's Department of Permitting Services, or designee.
- d. **DPS:** Montgomery County's Department of Permitting Services.
- e. **DPS Zoning & Site Plan Enforcement (ZSPE) Inspector:** An Inspector employed by DPS.
- f. **Planning Board:** Montgomery County Planning Board of the Commission.
- g. **Planning Director:** Director of the Montgomery County Planning Department, or designee.

2. Review of Building Permit Applications

- a. The DPS Director must review building permit applications for conformance with the zoning ordinance.
- b. The DPS Director must review building permit applications for conformance with the certified site plan and all appropriate conditions of approval in the Planning Board's Resolution.
- c. The DPS Director must provide one copy of all new commercial building permit applications and or additions, along with supporting documents, to the Planning Director for review or assign a review task in e-plans to the Planning Director.
- d. The DPS Director must provide one copy of all new residential building permit applications, along with supporting documents, to the Planning Director for review or assign a review task in e-plans to the Planning Director.
- e. The Planning Director must review building permit applications for conformance to the certified site plan and all appropriate conditions of approval.

3. Review of Certified Site Plans

- a. The Planning Director must email notification of all new certified site plans and amendments to the DPS Director within one week of certification.
- b. The Planning Director must make all certified site plans and amendments available to the DPS Director electronically.

- c. The Planning Director must make Site Plan Surety and Maintenance Agreements available to the DPS Director electronically.

4. Inspections

a. Routine Inspections

- i. DPS ZSPE Inspector must conduct routine inspections of all active certified site plans for conformance with the approved building permit and the certified site plan at least every 10 working days that it is under construction and update the automated permit system within 3 business days.
- ii. DPS ZSPE Inspector must inspect all active certified site plan developments for compliance with all elements/requirements of the certified site plan including, but not limited to: recreation facilities; site furniture; landscaping including street trees; on-site lighting; private roads; private storm drains and private sidewalks, retaining walls; fencing; parking facilities; hardscapes; streetscapes; and all other site plan requirements.
- iii. DPS ZSPE Inspector must inspect the development for compliance with the development standards and the zoning ordinance, such as height and set-backs.
- iv. DPS ZSPE inspector must conduct a pre-construction meeting with the Developer/Applicant to review required inspections, enforcement procedures/remedies, conditions of development approval, trigger points, and other binding elements/agreements shown in the certified site plan.

b. Interim Landscaping/ Site Amenities Surety Bond Reduction/Release Process

- i. At the request of the Developer/Applicant and upon successful installation of the landscape materials/site features identified on the certified site plan, DPS must notify the Planning Department that up to 50 percent of the financial surety for landscaping/site features can be released.
- ii. Upon receipt of DPS acceptance of the site amenities and landscaping, the Planning Department will notify the Developer/Applicant that up to 50 percent of the financial surety attributed to landscaping /site features can be released upon submission and approval of a replacement financial surety or rider that reduces the amount of the original surety. Once a replacement financial security reducing the amount of the original surety is received, the Planning Department will release the original financial security, or keep the original if a Rider to the original security was submitted in lieu of a replacement security.

c. Final Inspection

- i. Upon satisfactorily installing all site amenities and maintaining the landscaping through the (1) year maintenance period, DPS must notify the Planning Department in writing that the Developer/Applicant has satisfied the specific requirements of the site plan and that any financial security retained can be released.
- ii. Upon receipt of final acceptance from DPS the Planning Department must release all outstanding financial securities submitted by the Developer/Applicant, for that phase of the development or the entire property, whichever is relevant.

d. Inspections Based Upon Allegations of a Violation

- i. DPS will investigate all allegations of site plan violations.
- ii. Authority for the initial processing of complaints rests solely with DPS. The Commission must immediately refer all complaints received to DPS. Upon receipt of a complaint, DPS must send notice to the Planning Director that a complaint has been received and a brief written description of the complaint.
- iii. DPS, upon receipt of any allegation of site plan violations from any person, including the Commission, must inspect the site for compliance with the certified site plan within 3 business days of receipt of any such allegation.
- iv. DPS must notify the complainant and the Planning Director of the results of its investigation within 7 days of receipt of the alleged site plan violation.
- v. If the complaint relates to clearing or grading in a conservation easement or "scenic" easement that is shown on a certified site plan, DPS must jointly investigate the alleged violation with the Commissioner's Inspector.

5. Enforcement

- a. Upon a finding of non-compliance with a certified site plan, DPS must issue a notice of non-compliance/notice of violation under §8-26(g) and §59.7.8 of the Montgomery County Code ("Code"), or issue a citation and/or stop work order under the provision of §50.10. of the Code (as Planning Director's designee) as appropriate and must send a copy of the notice to the Planning Director within 72 hours of its issuance.
 - i. If the non-compliance/violation can be brought into conformance with the certified site plan, then DPS must ensure the development is brought into conformance.

- ii. If the non-compliance/violation cannot be brought into conformance with the certified site plan or the alleged violator refuses to conform the development as shown on the certified site plan, then DPS must refer the matter to the Planning Director for appropriate action.

- b. If DPS and the Commission determines there is a violation found in a conservation easement or “scenic” easement shown on a site plan, it is agreed that the Commission will take the lead on the investigation and provide the complainant and DPS with a response in writing of any enforcement procedures that may or may not be necessary.

- c. The complainant, the Planning Director or the alleged violator may request in writing that the Planning Board review a DPS finding of compliance or non-compliance, such review to be filed as provided for in the Planning Board’s Rules of Procedure. Upon request for such a review, a Commission Inspector may inspect the site to determine compliance or non-compliance with the certified site plan.

- d. Upon receipt of a request for review by the complainant, the Planning Director or the alleged violator, DPS must provide the Planning Director with a copy of all records used in its determination.

- e. If the Planning Board holds a hearing on the alleged non-compliance, the DPS ZSPE Inspector must appear and testify at the Planning Board hearing as to the DPS ZSPE Inspector’s findings.

6. Inter-Agency Communications

a. Implementation of MOU

At the request of either the DPS Director or the Planning Board/Planning Director, the DPS Director and Planning Director must meet to discuss the implementation of this agreement.

b. Zoning Ordinance Interpretations

The DPS Director and Planning Director must convene appropriate members of their respective staffs no less than semi-annually each year to coordinate building permit application review and inspection issues to ensure consistent interpretation and application of the Zoning Ordinance provisions. Each agency must provide copies to the other of any advice memoranda generated interpreting a provision of the Zoning Ordinance. DPS staff and Planning staff will continue discussions, as necessary, regarding measurement of

height. Both agencies recognize that the Planning Board has the discretion to assign a point of measurement for height for each building in accordance with Section 59.4.1.7 of the Zoning Ordinance.

c. **Intra-Agency Communication**

Subject to County Council appropriations, DPS and the Planning Department will have full access to each other's permit database and tracking system (through Hansen or a similar system) to query and approve permits.

d. **MOU Review and Comment**

DPS and the Planning Board agree to submit this MOU, as may be amended from time to time, to the County Council for review and comment every three years.

7. **Fines:** Fines collected by each agency must be dispersed in accordance with the policies and procedures of the respective agency.

8. **Modifications and Amendments:** This MOU may be modified or amended only by an instrument duly executed by both DPS and the Planning Board and any modification shall be transmitted to the County Council.

As Chair of the Montgomery County Planning Board and as DPS Director of the Montgomery County Department of Permitting Services, we respectfully hereby agree to abide by the goals, objectives, terms and agreements as set forth in this MOU.



Casey Anderson, Chair
The Maryland National Capital Park and Planning Commission
Montgomery County Planning Board

Signed the 20th day of February 2020



Hadi Mansouri, Acting Director
Montgomery County Department of Permitting Services

Signed the 28 day of January 2020