

# **DECEMBER 16, 2020 CAAPB MEETING MINUTES**

Attendance: Lt. Gov. Peggy Flanagan, Chair, all other Board members including Dr. Kate Beane, Don Grundhauser, Ted Lentz, Daniel Yang, Rep. Raymond Dehn, Sen. Carla Nelson, Elaine Fink, Sen. Sandy Pappas, James McClean, Alicia Belton, and Rep. Jerry Hertaus, CAAPB Architectural Advisors Michael Bjornberg and Denita Lemmon, CAAPB staff Paul Mandell, Peter Musty and Linda Spohr, State AG rep. Christie Eller; also Administration Commissioner Alice Roberts Davis; Ramsey County Commissioners Trista MattasCastillo, Raphael Ortega and Jim McDonough; County staff Jean Kreuger, Amy Schmidt, Keith Latimore; M Health Fairview Trudi Trysla and Paul Onufer; Saint Paul Police Commander Jeremy Ellison, Education MN Sara Gerdrun, Shane Patrick and Londell French; Capitol Heights residents/property owners Michael Menege and Hannah Hills

Lt. Governor Flanagan convened the Board meeting at 1:07 p.m. and noted meeting method due to COVID, subject to Open Meeting Law in Statute and during an emergency.

Roll call of the Board reflected all Board members present, and for the Architectural Advisors, all present except for Tony Chevalier. The AG representative for the day is Christie Eller.

Board minutes of November 13 were MOVED by Rep. Dehn and SECONDED by Board member Lentz / APPROVED unanimously.

The Lt. Governor, as Chair, acknowledged the incredible amount of work leading up to November Board meeting, and extensive work since then with CAAPB staff juggling so much of their regular workload. She acknowledged the urgency of the matter before us regarding reuse of the vacant Bethesda Hospital as a Homeless Shelter and COVID Respite Care Center. She also spoke to the first need being a Variance and the second, a Conditional Use Permit; noting for all that the CUP is dependent upon approval of the Variance. Should the variance fail, the meeting would end.

Principal Planner and Zoning Administrator Peter Musty gave a brief outline of the details behind the proposal, then the criteria for which a variance may be granted if all are met. He spoke of the proposal by Ramsey County, with a tentative deal with M Health Fairview for re-use of the now-vacant Bethesda Hospital for an 18-month lease for use as a homeless shelter for 100 beds and a COVID Respite Care Center for 68 beds.

He told the Board that the Variance was needed due to proximity of two other different and well-established licensed facilities within the distance where such concentration is prohibited by our zoning rules.

Musty also cited the six criteria that must be met to approve the variance, without which the discussion of the CUP based on the proposed land use itself would be moot. Peter then turned to the County as applicant.

Jean Kreuger introduced the people with the County and with M Health Fairview. On the call were County Commissioners Trista MattasCastillo, Raphael Ortega and Jim McDonough; as well as Ryan O'Connor, County Mgr., Keith Latimore (Operations Chief, Hsng. Stability and Incident Mgt.) Amy Schmidt (Ass't County Attorney), Jean Kreuger, (Dir. Of Property Mgt.); and Trudy Trysla (Chief Admin. Officer, Fairview) and Paul Onufer, (Systems Exec., Fairview).

Commissioner Castillo spoke to the need for an overnight shelter increasing in urgency because of the cold weather and on-going increase in homeless population; all during an emergency due to the pandemic. She spoke of the new steps the County is taking to address needs for shelter, looking to

Mary Hall, Safe Space, hotels, Bethesda, Luther Seminary, Sisters of Saint Joseph Provincial House, as well as Harriet Island Pavilion and the Duluth Rec Center.

She spoke of the 700 plus new beds to get people out of encampments in total, adding reference to the day center at Freedom House on W. 7<sup>th</sup> St. As for Bethesda, the proposal was for 100 shelter bed / 68 COVID respite beds, pending outcome of today's Board decisions. She also cited the highly recognized service provider applications been received and the on-site clinic and triage services being formulated. She referenced the two or three listening sessions and numerous one-on-one talks with concerned community members as part of their commitment to working together to ensure that this will be a positive, coordinated community-based approach to meeting a critical need. She spoke of the mutual benefit of new use for the vacant building in the heart of the community while meeting an urgent need to address homelessness.

Trysla of Fairview sees this temporary use as serving the community at a time of emergency; Latimore spoke to operations and standards of 24/7 security used elsewhere with success; with on-site staffing trained in CPR and Narcan, plus all the needed wrap around services including transportation and navigation for housing stability, security for building and grounds that are trauma-trained in de-escalation, along with posting of non-emergency contact numbers for those on the grounds as well as neighbors needing help.

In response to stated concerns from the community engagement by the Capitol Heights community, Bethesda plans had been upgraded to a 'step-up' living space vs. 'low-barrier' shelter. Planning now included two different sites for entry points, using Mary Hall (for men) and Luther Seminary (for women) and other sites in coordination with the 'step-up' (following a minimum of 7-day living under supervision in shelter after coming in off the street). Latimore reviewed the community engagement of record, including the CAAPB staff meetings

County Attorney Amy Schmidt spoke of the letter for the record, describing broad leeway and Board's wide discretions in granting of variance, focusing on first three of six criteria, the first being reasonableness, valid as a permitted use (as temporary use). Without the other two sites, a variance wouldn't even be needed. She spoke to the value of use by HealthEast to address a community need, fitting as a reasonable use to serve the public.

She also spoke to the second criteria, uniqueness of the site, as a good fit given the building's design to house clients. The other two licensed facilities both being different than this proposed use by the County, and the County's not having any control over those. With the distance rule applied, measurements to the actual building itself does not in effect, create an over concentration, in part due to the different scale of the other facilities, as well as the topography or grade difference and sight lines, resulting in negligible impact.

Lastly, she addressed the third criteria, that of health, safety, and welfare. Despite the fears, there is no evidence of a threat, citing a ruling by a judge to a lawsuit initiated by some of the neighbors. The judge had dismissed the suit citing expressed fears of harm as speculative, which at best was found to be only anecdotal. Mr. Latimore cited lack of issues at the majority of their current sites including hotels.

Sen. Nelson acknowledged the need for safe, secure shelter in MN, especially given the threats posed by the pandemic as clear. She asked about security and Type 1 and 2 crimes, with Mr. O'Connor citing low numbers of police calls at other similar sites. She also asked about the time element, and O'Connor noted that the site only came up as recently as September 14. Lastly, she asked if staff had a recommendation, to which Exec. Sec. Mandell said not for the variance.

Rep. Dehn asked Latimore about stay time, with the response that stay is not limited, ranging from 1-2 days to months, depending on how they process through further steps toward stability. He asked Peter Musty for clarification of distances and geography, acknowledging that use of property lines vs. acknowledgement of topography and actual entry and exit points give different pictures with regards to potential conflicts.

Lastly, on the scale of the hospital vs. the County's recommended capacity. Jean Krueger the cited hospital entry points. Trudy reported that only 60-80 beds on average had been used as a hospital, but that not all the floors would be used for the shelter.

Board member Belton acknowledged changes in the upgrade of 'clients' since November, including other improvements. As for clients, the respite care center itself would be open to both men and women.

Rep. Hertaus spoke from his professional of a past health provider, real estate person and building contractor. Under law, variance and CUP are in perpetuity. Temporary nature aside, reasonableness is a square peg in a round hole, but the buying public relies on zoning laws which are provided to protect their investments and livelihood. Highest and best use is a long-standing standard. This is in effect, turning into a boarding house. Hennepin County is purchasing properties with COVID money. Hennepin County knows that people may be coming from outside of MN, so while the intent is good, the homeless are attracted to come here; it is believed that the population is largely single parents without good skills, those with mental health and drug addiction issues. In the marketplace, the perception of people matters to buyers. He expressed his belief that not all conditions are being met.

At this point, Chair Flanagan moved into testimony by the public.

Michael Menege of Concerned Citizens of Capitol Heights spoke, thanking the Board staff, speaking to revised statements by County as to reasonable use of the hospital that just stopped without search for any other tenants. Additionally, as for the plight of landowner, not unique, that closure, not the proximity of other shelters was the cause. It was a direct result of Fairview's decision, not action by County. As to measurements relating to distance, as the crow flies is just that simple, not per pathways available on the ground, so the plight is due simply to the closure, and thinks the County's argument comes up short.

Third, regarding 'in keeping with the spirit of the Comprehensive Plan and health, safety, comfort, morals and welfare,' he spoke of crime statistics from numerous areas associated with drug use and chemical abuse. Addressing the fourth criteria, light and air are not affected since no changes are proposed to the existing building. However, he cited that New York City stats showed negative impacts on property values. He thinks with latest submittal, the goal posts keep changing, typical of how the County change their plans. Regarding the health and welfare, it comes down to that of Saint Paul residents and workers, not new move-ins; therefore, the criteria are not met on numerous points, so he thinks that denial is merited.

Senator Nelson isn't concerned with the distance, but the lack of other reasonable use, suggesting that Senate Counsel should review this. She also questioned the part, "in keeping with..." she doesn't believe Bethesda is the right place in keeping with spirit and intent of health, safety and welfare of Saint Paul, nor about the presumption and perception that Fairview is doing this for the sole reason to make money. She thinks variance conditions are not met.

Rep. Dehn: Two lawyers can present things in two different ways. He was an architect prior to elected office and a variance is often needed, and, in this case, this unique site and distance is the only

reason a variance is even needed. The County is leasing the beds, not the whole building or campus, so measuring distance as radial is somewhat questionable. How to parse and pick measures will be the question. The neighborhood is on one side of this issue, the county and city on the other side.

Dehn saw the County as able to deliver and mitigate any possible negative impacts. He sees reasonable use being met with limited negative impact. The County is capable of mitigating issues as needed and can afford to do what is necessary.

Board member McClean is a downtown resident, formerly on CRC Board, currently on the Board of Catholic Charities and an employee at Regions with offices across from Bethesda. He noted that he is not representing Health Partners, but he sees the need for shelter services as all too often, hospitals are the last resort, which during a pandemic, makes things even more difficult.

He mentioned concerns of CRC and downtown businesses with the County shortage of beds, noting that the Capitol River Council, which includes up to University Avenue, supports the shelter as a necessary part of the solution to homelessness, as does Regions in general, but not specifically to the shelter in question. So, what then when we run out of shelters and people are still left on the streets in winter?

Rep. Hertaus stated that he doesn't see the first three conditions as being met; saw as a reasonable use of the hospital other uses, even as homeless shelter for those who are seniors and/or disabled. As to the plight of the owner, he too sees it as the direct result of their closure, and as to the spirit, this use is simply is not compatible with surrounding uses.

Board member Lentz spoke as leaning toward viewing this as a good use, given his long-standing assumption that Bethesda would eventually be closing, given finances and the current trends; as a 'when', not an 'if'. He expected closure and anticipated that it would come suddenly, that Fairview eventually would be forced to make the tough decisions. He spoke of other shelters where similar opposition in other communities, where plight of the landowner and fear of negative impacts is not often born out, despite what might have happened in NY, this is not NYC, and the MN experience has been better.

Board member Kate Beane noted that this need is more important than bureaucracy because we're dealing with lives, health, safety. Our homeless are also residents and neighbors. Their plight is the result of basic needs not being met.

Board member Belton stated that we, as the Board, have an opportunity to do something good. Arguments for or against all come down to one's perspective. Her experience had been as an architect with a women's shelter that failed due to opposition. This is surely a reasonable use by the County and is an opportunity, not a threat, to help people utilize and implement a dependable operation for a vacant space.

She noted that we all have a lot to learn from this population and we have an opportunity to offer safe, stable secure help with a set of best practices for this community.

Sen. Nelson, spoke to reasonableness being based on no other use, suggesting a tabling, with review for Senate counsel, especially given that CAAPB staff did not have a recommendation. She acknowledged the need, would allow for other uses. Senator Nelson MOVED to TABLE.

When asked by the Chair, Exec. Sec. Mandell noted that Motions to Table are non-debatable. Senator Nelson then laid her motion on the floor, allowing others to still speak.

Board member Lentz said that reuse of a hospital, based on his experience in rehab work, is a very specialized niche, difficult at best, and likely to take an extensive amount of time.

Lt. Governor Flanagan noted that both Dehn and Beane brought up a good point that the Pandemic and the cold winter is exacerbating everything, seeing this as a time sensitive proposal, the need is crucial. She has worked in housing and homelessness for months. Our community is all connected. As a Board, it's our judgement call. She is encouraged by members of both Senate and House in their acknowledgement of the need moving forward as the Legislature, pledging to work with them in her role not as Chair of the Board but as Lt. Governor.

Sen. Nelson then MOVED TO TABLE. Hertaus SECONDED.

Tabling failed 3-9, with Nelson, Hertaus and Grundhauser voting in the affirmative.

Representative Dehn acknowledged the value of all Board members thoughts, experience, and perspective.

The Variance was then MOVED by Senator Pappas, and Board member Fink SECONDED. Approved 9-3.

#### Conditional Use Permit –

Peter Musty then ran through CUP criteria and conditions: commitment to terms, time limit, encampment prohibition, security plans and resources, 24/7 communication plan, use of the garden rules, operations plan and commitment to on-going community stakeholder meetings. He noted the presence of Saint Paul DSI Director Cervantes and St. Paul Police Central District Commander Jeremy Ellison.

Mr. Cervantes of Saint Paul DSI, who had submitted two memos, addressed the process of code application and key elements for a successful shelter. City will be responsible for certification of Occupancy. He spoke to readiness of the building for this purpose. The memos referenced the building and fire codes, and the history of review for more than eight other shelters, using BWBR as a consultant on performance-based design to guarantee safety, looking to the Certificate of Occupancy, should the CAAPB issue their necessary permits.

Commander Ellison of Saint Paul Police stood available to answer questions if needed and acknowledged the interest of time.

County attorney Amy Schmidt, spoke to several slides relative to the CUP, said that the County believes the proposal meets the first two conditions, third being the actual conditions before the Board, with some already met and a few suggestions on #s 4 & 8.

Conditions #s 1, 2, 3 and 5 acceptable to County, # 4 Security Plan was just received by Board staff, # 6 – signage already present, # 7 – Operation plan just submitted, and # 8. A Stakeholder meeting is acceptable, so long as first meeting hopefully doesn't delay any permit.

Two members of the public offered public testimony:

Hannah Hills expressed her general feeling of whiplash due to speed of the proposal and related action. Community engagement in town meetings were inadequate, one-on-ones in question, struggles with County's response to neighborhood concerns. Rice St. continues to be an issue, especially with the liquor store. She said the neighborhood lacks confidence in the County being a good neighbor. She thinks the plan is vague, but saw that conversations are increasing, which is good. She asked for clarification on low-barrier status (is it or is it not still low-barrier-meaning use of alcohol and drugs could be more problematic).

The other concerns are for possible use of drugs or alcohol off the grounds as spill over into the neighborhood from shelter, given likely turn-over beyond the 168 beds with rotation of people moving through the neighborhood. She thinks the County and City should work on addressing needs rather than politics. She also spoke of problems with Rice Street storefronts with security patrols at least one block into the neighborhood, with maybe the County security expanding the perimeter. She said that the homeless are sometimes victims. Thinks there will be lost property values with nothing in return, so one suggestion was to use of stats from New York City earlier cited by Michael to reduce property taxes.

Conclusion: Clarify low barrier, good neighbor policy, timeline prior to permit binder and tax reduction.

Sara Gerdrun of Education MN has 80 employees present both weekdays and at times, weekends, with many visitors. She introduced Shane Patrick, Dir. of HR and Facilities Mgt., along with their consultant, Londell French, Equity Organizer and Minneapolis Park Board. They want to be a good neighbor to support those needing shelter and provide safety for those using the building. She reported that proactive desires are still in formulation, acknowledging Mr. Cervantes input. Shane Patrick addressed the adjacent ramp issues with lighting and cameras for safety purposes with a response team for possible incidents.

As to Conditions 4 (pt. 2) and 8, with concern for victimizers and spill-over effect, wanting to be an active partner and part of ongoing review process; communication per # 5 site management, have real-time, two-way system provided, via either text or pushed out alert. Londell spoke of their commitment to be Good Neighbor, and plan to train their staff, with a dire need for cultural awareness and value of being proactive.

Mr. O'Connor of the County is committed, with similar partnership at Luther, St. Kates, Mary Hall and numerous hotel sites, working to adjust, learn and grow according to the needs. He spoke to #5, on communication, they are already conducting weekly communications with several parties and a liaison with the Block Club, apologizing if the response and outreach had been inadequate to date. They will assure they are good neighbors and will keep regular communication and opportunities for comment every Friday.

As to additional restrictions, he spoke against any that might delay or impede provision of these critical services as we face colder months, especially those restrictions affecting the timelines.

This is no longer a low barrier entry point, replaced by Mary Hall and Luther; with step-up classification provision requiring of 7-day in monitoring proving successful before someone can 'step-up' to some place like Bethesda.

Rep. Dehn; asked about services on-site dealing with addiction as earlier noted, confirming that it is a step up vs. low barrier facility, etc... The RFQ was out publicly, with over 12 responses, though with slower than the desired timeline.

The Chair thanked all those who testified, especially the public, and encouraged and assured a full and robust communication plan. She also expressed appreciation for input from Education MN for their proactive ideas. She then noted that regarding conditions 1,2,3, and 5, which the County already spoke to without concern, polling issues from the Board, looking for more than one Board member with a problem or concern.

None for # 1, # 2- one board member with an issue on time limit, # 3-none, # 4 - two on the security plan, #5-none, # 6- three on signs in the garden, # 7 - two on the operations plan prior to permit, and # 8 – four on stakeholder mtgs, the first before permit .

This meant a review of four conditions. # 2 wanting it clear that 18-month longevity is clarified, not allowing for a simple renewal, with a five- year interim suggested by Rep. Hertaus. Alternatively, the Board would have to approve any extension.

Senator Nelson saw this as the law, given that both permits were time limited. She suggested regular updates by County.

Executive Secretary Mandell noted that the County has no rights or role with the property after May of 2022, so M Health Fairview, as owner, would have the responsibility to develop plans for the building's future.

Senator Nelson suggested some reasonable reporting period prior to end of lease... let alone in respect to the need of those using the shelter. Mandell suggested a plan update reported by Fairview to the Board, at the latest, by December of 2021, for use of their facility, thereafter, providing regularly updates prior to closure of the shelter in May, 2022.

Senator Nelson MOVED this, Lt. Governor SECONDED, amended language approved unanimously for Condition #2.

For Condition #4, second part, Mandell noted that CAAPB staff has today received both the Operations Plan (15 pages) and a Security Plan (fifty-plus pages). Senator Nelson inquired about stats and differences between Level 1 and 2 crimes for reports. Mandell cited plans for Stakeholder meetings on a monthly basis already having buy-in from Saint Paul Police, Capitol Security, the County for their security contractor and same with Fairview to participate with provided information to be noted in Condition # 8 (per Sen. Nelson).

Senator Pappas cited the weather and urged cooperation or simultaneous work toward the permits. # 4 to remain as is, with plans received.

Moving on to Condition # 6, on signage in the garden, Jean Krueger noted that neighborhood security review in Cond. 4 required a security mtg. prior and could be accommodated on Monday.

Musty noted that Saint Paul police has already made an analysis of conditions in and around the entire campus, and a meeting to discuss is scheduled for Friday the 17<sup>th</sup>, for understanding of baseline, and that it will not pose a problem of delay. The neighborhood meeting in question is addressed in # 8. For # 6, objection to the posting in the garden, (a privately-owned space) as to prohibiting drugs and alcohol, which is already prohibited by law, v. for example, guns, that should be noted as "illegal" guns, since, if permitted under conceal and carry, is a rights issue.

Rep Hertaus MOVED addition of "illegal" to guns, Chair SECONDED. Rep Dehn noted that as a private space, all guns can be prohibited by the property owner. AG Christie Eller was asked to

address this issue. She said a private owner can prohibit anything. The garden is not leased by the County under the proposal. Hertaus WITHDREW the motion. One sign already posted. Rep. Dehn MOVED dropping (To Strike), SECONDED by Board member Lentz of Condition # 6, allowing the County to work with the neighborhood, possibly addressing in another way; others wanting signage at least signs governing hours, suggesting some hours.

Board member Belton suggested modification, with comfort language, maybe worked out with the neighborhood. Rep. Dehn, seeing the park as wide open, what signs and where?? Again, AG Eller saw wordsmithing by the Board as totally up to the Board.

Rep. Hertaus recommended dropping everything after the end of the first sentence, supported by Dehn and Belton, after the word, 'on-site', calling for signs and leaving what is put on the signs unspecified. Dehn WITHDREW his motion to strike, then MOVED instead the referenced edit as suggested above. That motion PASSED unanimously.

Condition # 7 has been met with receipt of 50-page Operations Plan

Condition # 8- on Stakeholder meetings, crime reporting to monthly meetings is worthy, with first meeting tied to opening, not permit, with the Chair suggesting such meeting could be Monday, Dec. 21, allowing for opening on the 22<sup>nd</sup>. Senator Nelson said it is important to track BOTH Level 1 and Level 2 offenses.

Mandell noted that police already report these to the Block Club meetings, with Senator Nelson MOVING, Rep. Dehn SECONDDING inclusion of reference to include these stats in monthly meetings. Motion passed UNANIMOUSLY.

The Chair MOVED that the first meeting occur on Monday, Dec. 21, SECONDED by Belton. Motion PASSED UNANIMOUSLY.

In closing, the vote on CUP now stands, with approval of all eight conditions, with #s 2,6, and 8 as amended, with Senator Nelson noting poor situation the Board and staff was put in. MOVED by Board member Lentz, SECONDED BY Board member Fink." Motion to approve all, AS AMENDED (per Mandell, notating that the staff recommendation, second bullet , addressed this very point in the memo) Motion PASSED 10-1, (Rep. Hertaus voting no) with several noting that the work at this meeting had clearly made improvements to the document.

Board Chair Flanagan the cited Rep. Dehn for his years of service to the Board and the State. Thanking him for his insightful architectural input and his legislative work for justice and the underrepresented. He noted going out on probably the longest Board meeting he's ever been part of and spoke to the honor of serving on this great Board. He encouraged all the neighbors to continue to be engaged in the process and in helping to make the new people coming to Bethesda feel welcome.

Mr. Mandell thanked Rep. Dehn for his work on the Nellie Stone Johnson, along with member Fink. He also reminded several members, including all the legislators, that several have terms ending. All legislators, as well as Mr. Lentz and Ms. Belton.

The Chair thanked all, acknowledging her own personal background, people affected by COVID and or other issue out of their control end up in need of help, compassion, and support from us all. Wished all the best of safe holidays.