



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #
MCPB 5-13-10

MEMORANDUM

DATE: May 3, 2010

TO: Montgomery County Planning Board

VIA: Catherine Conlon, Supervisor *CC*
Development Review Division
Mark Pfefferle, Acting Chief, Environmental Planning *MP*
Stephen Federline, Master Planner, Environmental Planning *DF*

FROM: Richard A. Weaver, Planner Coordinator *RAW*
Development Review Division *MP*
Marco Fuster, Senior Planner
Environmental Planning

REVIEW TYPE: Limited Amendment to the Preliminary Plan, including associated Final Forest Conservation Plan (FCP) – Removal of Existing Category I Conservation Easement

APPLYING FOR: Amendment to a Preliminary Plan and Final Forest Conservation Plan (FCP)

PLAN NAME: Kentsdale Estates (Lot 41)

PLAN NUMBER: 11997056A

PLAN TYPE: Preliminary Plan Amendment and Final Forest Conservation Plan Amendment

REVIEW BASIS: Forest Conservation Regulations, COMCOR 22A.00.01.13A. (2)

ZONE: RE-2

LOCATION: Located on the east side of Willowbrook Drive at its intersection with Paytley Bridge Lane; Potomac.

APPLICANT: Roma Malkani c/o Fountain View

ATTORNEY: David W. Brown

HEARING DATE: May 13, 2010

STAFF RECOMMENDATION: Approval of the Limited Amendment to Preliminary Plan #11997056A and associated changes to the Final Forest Conservation Plan including modification to the existing Category I Conservation Easements on Lot #41 only, subject to the following conditions:

1. Compliance with the conditions of approval of the Amendment to the Final Forest Conservation Plan for Lot #41 Kentsdale Estates. The applicant must meet all conditions and requirements prior to MCDPS issuance of sediment and erosion control permit(s). Specific conditions include the following:
 - a. Approval of a Final Forest Conservation Plan Amendment for Lot #41 Kentsdale Estates consistent with FCP regulatory requirements found in *Forest Conservation Regulations* - COMCOR 22A.00.01.09 B, including specific requirements as listed in the May 3, 2010 letter from Environmental Planning staff to the Applicant (Attachment A).
 - b. The final sediment and erosion control plan must match the limit of disturbance as shown on the Final Forest Conservation Plan Amendment for Lot #41 and be consistent with its recommendations for tree protection.
 - c. Record plat to reflect a minimum of 0.44 acres of Category 1 conservation easement which includes all existing forest to be retained, in the eastern corner of Lot #41.
 - d. Record plat must be recorded prior to any land disturbing activities occurring on the lot.

SITE DESCRIPTION

The subject property shown outlined below is Lot 41, Kentsdale Estates, a 4.09 acre lot within a 20.1-acre subdivision of seven lots located on Willowbrook Drive east of Paytley Bridge Lane in Potomac. Immediately to the east of the subdivision are lots developed in the R-200 zone. Lots platted in the RE-2 zone surround the subdivision to the north, west and south. The property is within the Cabin John Creek watershed, use I-P waters. There are no streams, wetlands, floodplains, or associated environmental buffers located on the subject lot. However, as is common with many subdivisions, ephemeral drainage flows from the lots upslope, through the subject lot. Lot 41 is currently vacant and forested. The footprint of the existing forest conservation easements are shown by the highlighted areas in the image on the following page.

Exhibit 1: Vicinity Map



BACKGROUND

The Property is subject to a previously approved preliminary plan of subdivision and an approved final forest conservation plan (FFCP). The Planning Board approved preliminary plan #119970560, Kentsdale Estates, in a public hearing held on May 22, 1997; the Opinion was mailed on May 28, 1997. Environmental Planning staff approved the associated FFCP on July 31, 2001. The existing approved FFCP for the subject lot shows the loss of 2.60 acres of forest on the 4.09 acre lot. The record plat formalizing the subdivision was approved on March 27, 2001 and contains the signature of the current applicant, Roma Malkani. Proposed development within the LOD included a 20,000 square foot home footprint, a significant amount of driveway surface, and associated sediment control and storm water management measures.

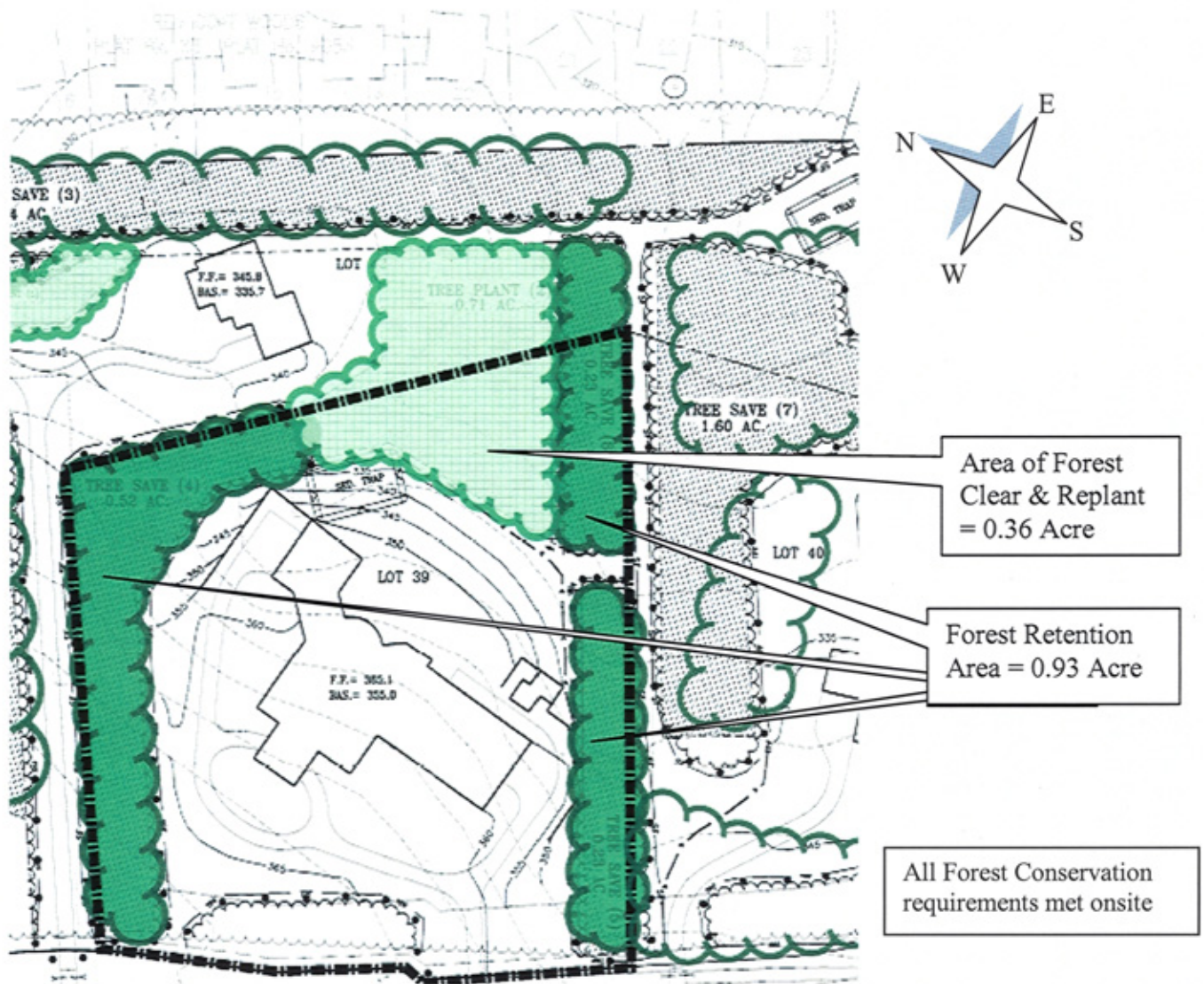


Exhibit 2: Existing Approved Plan and recorded Category I conservation easements

CURRENT PROPOSAL AND REVIEW HISTORY

The approved Final Forest Conservation Plan was the subject of an amendment application submitted on September 3, 2008. The first amendment request proposed removal of the majority of the Category I easements from Lot 41 and compensation with offsite mitigation at a 2:1 credit ratio. The Planning Board **denied** the request at a public hearing on November 13, 2008, finding that the scope of changes proposed were unnecessary, excessive and avoidable; and that the offsite mitigation offered by the Applicant was not at least equal to or better than the forest conservation objectives met in the existing approved Forest Conservation Plan. (See Attachment B- Planning Board Resolution).

A second hearing on the amendment request was held on November 19, 2009. Staff recommended denial of the applicant's revised plan as it fell short of exploring all reasonable and feasible options to further minimize forest loss. In addition, staff provided clear directions as to the reasonable effort and expected retention minimums that staff would be willing to support. At the end of the lengthy hearing, the Board expressed support of alternative proposal, including recognition that DPS' concern for appropriate conveyance measures could be addressed within the proposed 0.44 acre forest retention area so long as minimization measures (e.g., proper alignment, natural materials, and manner of installation) would result in the least disruption possible and allow the disturbed area to regenerate or be reforested, as necessary. Furthermore, the applicant was required to provide absolute clarity as to how, where and how much mitigation would be offered. The Applicant requested a deferral of action to address the Board directives.

CURRENT PROJECT DESCRIPTION

The current proposal recommended for approval is the result of numerous interactions with the applicant. The current plan addresses the issues and directives from the November, 2009 hearing in the following manner:

- 1) A revised sediment and erosion control plan has been developed which protects the minimum acceptable amount (0.44 acres) of the highest quality forest (in the eastern corner of the lot);
- 2) A refined safe conveyance concept incorporates a tree-sensitive design and alignment for a rip-rap channel through the 0.44 acre protected forest area;
- 3) Additional onsite tree plantings are proposed to fill canopy gaps created by tree loss associated with necessary disturbance within the protected area;
- 4) Existing conservation easements which are to be extinguished permanently (0.86 acres) shall be replaced at a three to one (3:1) ratio, or 2.58 acres of forest credits.

The applicant has proposed to meet offsite mitigation requirements by purchasing appropriate offsite forest credits at Harrell Farm and/or the Inverness Farm Forest Conservation Banks, depending on availability at the time of execution. Both of the referenced forest conservation banks are comprised of existing, rather than planted, forest. As of April 30, 2010, the Harrell Farm has 7.78 acres of forest credits available in the Dry Seneca Creek watershed and the Inverness Farm has 0.81 acres of forest credits available in the Little Monocracy River watershed. The Harrell Bank has recently been harvested of timber; there are no forest banks within the same watershed as the Kentsdale Estates subdivision. If the identified banks do not have sufficient credits at the time of execution of the certificate of compliance, the applicant must use the forest bank with adequate capacity closest to Kentsdale Estates.

PROPOSED FOREST CONSERVATION PLAN CHANGES

The approved plan shows the conservation areas as a combination of tree save and tree plant. The current proposal is to make this entirely a forest save area for a total of 0.44 acres of forest save. The additional 0.30 acres of forest save, as shown in Exhibit 3 below, is high quality existing forest. The retention of this forest will provide benefits which staff believes would meet or exceed the value of the currently approved FFCP covering that easternmost conservation easement area. The benefits of additional forest retention in this area include:

- Saving additional forest expands the amount of contiguous forest within the subdivision, consistent with Forest Conservation Regulations (FCR) found at Code of Montgomery County Regulations (COMCOR) 22A.00.01.07.A.(2).
- Preserves highest quality forest onsite which exhibits good forest structural diversity and minimal invasives, consistent with FCR COMCOR 22A.00.01.07.B.(4).
- Retains forest in an area which will further enhance SWM practices upstream by protecting natural ground surfaces which in turn increases water infiltration and nutrient uptake.
- Retains existing forest which will buffer offsite Lots 22 & 23 along Great Arbor Drive. (See top right side of Exhibit 2). Preservation of trees which act as buffer between dwellings is referenced in FCR COMCOR 22A.00.01 Section 107.B.(3).
- Provides a clearly more sustainable and enforceable area of protected forest over time.

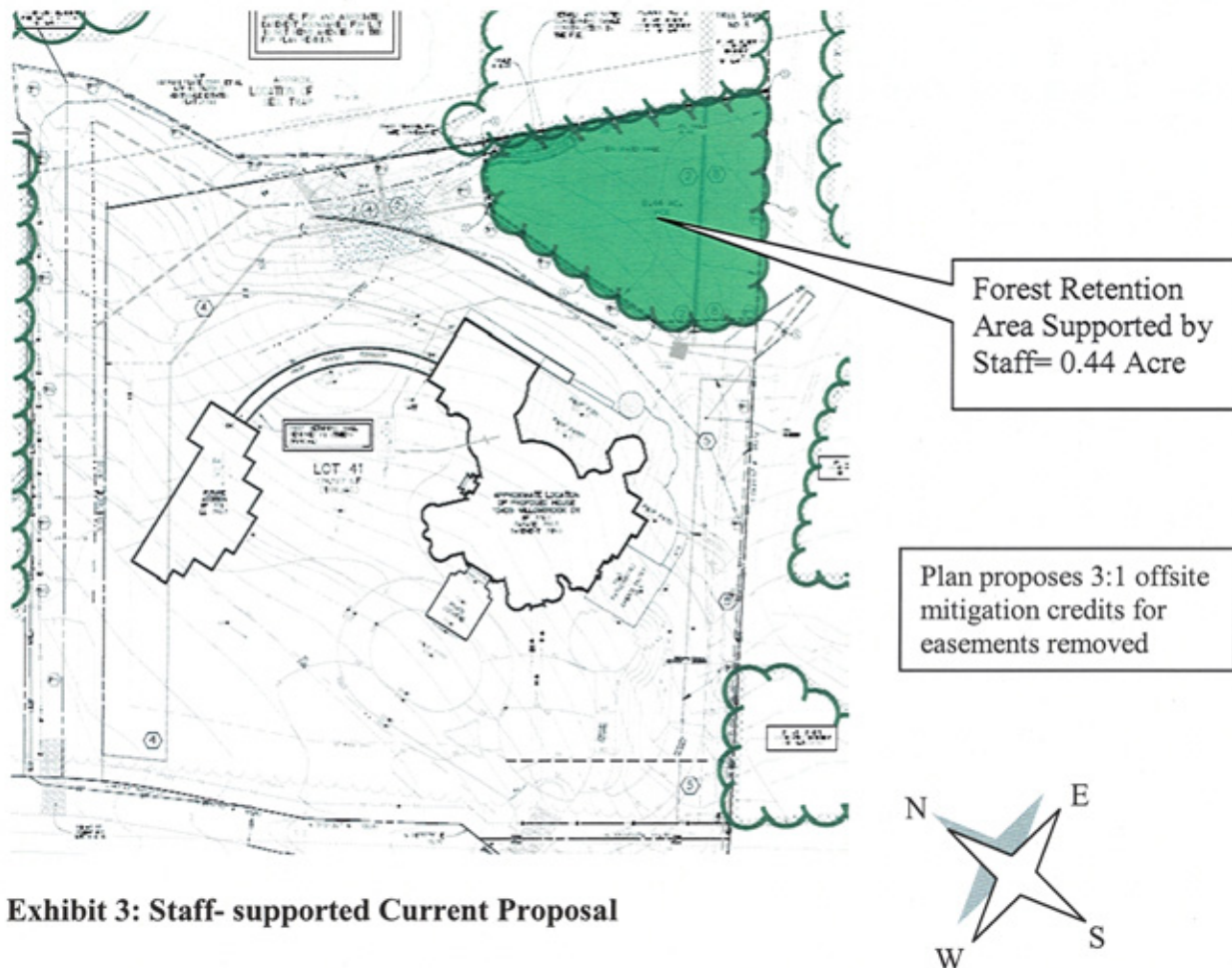


Exhibit 3: Staff- supported Current Proposal

In the final accounting, the benefits of the proposed plan meets or exceeds the value of the currently approved FFCP by providing the following:

- 1) Permanent protection of 0.44 acres of forest on lot which is contiguous to forest on the adjoining lot;
- 2) Conversion of ± 0.30 acres of area shown as “tree plant” (i.e., clear and replant) on the original plan to forest retention; and
- 3) Off site compensation of 2.58 acres of forest credit, at a 3:1 ratio for 0.86 acres of conservation easement removed.

NOTIFICATION AND COMMUNITY COMMENT

The subject property was properly posted in conformance with the Development Manual requirements. All adjoining and confronting property owners and interested parties will be notified of the public hearing on the proposed amendment in accordance with Planning Board policy. Any comments received will be forwarded to the Board. Residents who had either provided testimony at the November 13, 2008 hearing and/or November 19, 2009 hearing or who previously expressed concerns to Planning Department staff are also included in the notification. No citizen correspondence has been received to date for inclusion in the staff report. However, a number of written correspondences from adjacent residents regarding the previous proposal were retained on file. Some of the concerns previously expressed are relevant to the current proposal. The concerns included excessive onsite deforestation, loss of screening/visual buffers, encroachment into existing protected easements, and the offsite replacement of existing onsite resources. Staff has advised those parties that with the proposed amendments the plan will continue to fully comply with Chapter 22A, of the County Code.

SUMMARY AND RECOMMENDATIONS

Staff recommends approval of the applicant’s request and most recent proposal to amend the final forest conservation plan 11997056A, and its associated Category I conservation easements.

ATTACHMENTS

Attachment A – Letter to Applicant and agents with staff recommendation and detailed conditions

Attachment B – Planning Board Resolution



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Roma Malkari
19321 Holly Hill Place
Potsdam, MD 20817

May 3, 2010

Re: Final Forest Conservation Plan Amendment
Property Name: Kentsdale Estates Lot 41
Plot Number: 11957056A
Lot Size: 4.09 acres
Zoning/Landuse Category: RE-2

Dear Mrs Malkari:


Based on the review by Environmental Planning staff of the Montgomery County Planning Department, the Final Forest Conservation Plan Amendment submitted to M-NCPPC on April 29, 2010 for the plan identified above, is conditionally approved pending Planning Board action with the following conditions:

1. Compliance with the conditions of approval of the Amendment to the Final Forest Conservation Plan for Lot #41 Kentsdale Estates. The applicant must meet all conditions and requirements prior to MCDPS issuance of sediment and erosion control permit(s). Specific conditions include the following:
 - a. Approval of a Final Forest Conservation Plan Amendment for Lot #41 Kentsdale Estates consistent with FCP regulatory requirements found in *Forest Conservation Regulations - COMCOR 22A.01.01.09 B*, which include specific requirements as listed below:
 - i. Provide standard language which specifies sequence of events and inspection requirements, including events requiring arborist involvement.
<http://www.montgomeryplanning.org/government/forest/index.htm>
 - ii. Modify the critical root zone for saved tree (#12) that is in error or does not follow the standard procedure for estimating the size of critical root zones.
 - iii. Provide detail for permanent forest conservation monuments.
 - iv. If the Applicant's identified forest banks (i.e., Inverness and Harrell) do not have sufficient credits at the time of execution of the certificate of compliance, the applicant must use the forest bank with adequate capacity closest to Kentsdale Estates.

- v. Clarify all plan graphics by providing a legend item corresponding to each graphic used (in plan view) with proper plan notes/leader lines (including but not limited to the existing natural swale, and the proposed grass swale, contours and retaining walls).
2. The final sediment and erosion control plan must match the limit of disturbance as shown on the Final Forest Conservation Plan Amendment for Lot #41 and be consistent with its recommendations for tree protection.
3. Record plat to reflect a minimum of 0.44 acres of category 1 conservation easement comprised of existing forest to be retained, in the eastern corner of Lot #41.
4. Record plat must be recorded prior to any land disturbing activities occurring on the lot.

If you have any questions regarding these actions, please feel free to contact me at 301-495-4521.

Sincerely,


Marco Fuster, Senior Planner
Environmental Planning Division
M-NCPPC

Cc David W Brown
Catherine Conlon
Richard A. Weaver
Mark Pfeiffer
FCP File 11997056A



MONTGOMERY COUNTY PLANNING BOARD
OF MARYLAND COUNTY OF MONTGOMERY AND PART OF DISTRICT OF COLUMBIA

MCPCB No. 09-102
Forest Conservation Plan No. 119970560
Kentsdale Estates
Date of Hearing: November 13, 2008

OCT - 9 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review certain amendments to approved forest conservation plans; and

WHEREAS, on September 3, 2008, Roma Malkani ("Applicant"), filed an application for approval of an Amendment to a Final Forest Conservation Plan that would remove portions of existing Category I Forest Conservation Easement Areas on a 4.09 acre property located on Willowbrook Drive east of Paylley Bridge Lane ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated as an Amendment to Final Forest Conservation Plan No. 119970560, Kentsdale Estates ("Final Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated October 31, 2008, setting forth its analysis, and recommendation for denial, of the Application ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, on November 13, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on November 13, 2008, the Planning Board denied the Application, on motion of Commissioner Cryor, seconded by Commissioner Allandre; with a vote of 5-0 Commissioners Hanson, Robinson, Allandre, Cryor, and Presley voting in favor of staff recommendation for denial of the Forest Conservation Plan Amendment;

Approved as to
Legal Sufficiency

Christina Sorell 8/31/09

Christina Sorell, Esq., is a member of the Montgomery County Planning Board. She is also a member of the District of Columbia Bar.

www.MCPlanning.org E-Mail: mcp-chairman@mcppc.org

10/20/09

Attachment B – Planning Board Resolution (2 of 3 pages)

MCPB No. 09-102
Forest Conservation Plan No. 119970560
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NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A and Forest Conservation Regulations Section 113, the Planning Board denied the Application that would remove portions of existing Category I Forest Conservation Easement Areas on a 4.09 acre property located on Willowbrook Drive east of Paytley Bridge Lane. ("Property" or "Subject Property"), in the Potomac Subregion Master Plan area ("Master Plan");

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The scope of changes proposed by the amendment to the approved Final Forest Conservation Plan are unnecessary and excessive.*

The proposed Application for permanent removal of existing forest and associated modifications to existing Category I Forest Conservation Easement Areas are excessive and avoidable. Reasonable efforts were not made to protect the specific areas of forest as originally approved, nor have reasonable efforts been made to alter the development proposal. Alternative designs could be implemented to minimize impacts and provide features which are more compatible with forest conservation objectives. Therefore, the Board finds that the proposed amendment is unnecessary and excessive.

2. *The proposed amendment to the approved Final Forest Conservation Plan does not provide mitigation that is at least equal to or better than the forest conservation objectives met in the existing approved Forest Conservation Plan*

The existing Final Forest Conservation Plan provides approximately 1.3 acres of Category I Forest Conservation Easement on the Subject Property, approximately 0.93 acres of which is tree/forest preservation, and 0.36 acres of reforestation. The Application proposes to reduce the conservation easement footprint to an approximate total of 0.35 acres, consisting of 0.19 acres of tree/forest preservation and 0.16 acres of reforestation. The Application would retain almost 1 acre less in forest conservation easement than approved by the Planning Board as shown on the current Final Forest Conservation Plan. The Board determined that the offsite mitigation offered by the Applicant was not enough to make up for this loss. Therefore, the Board finds that the Application does not provide mitigation that is at least equal to or better than the forest

Attachment B – Planning Board Resolution (3 of 3 pages)

MCPB No. 09-102
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conservation objectives met in the existing approved Forest Conservation Plan.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and the date of this Resolution is Oct - 9 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Afandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland



Royce Hanson, Chairman
Montgomery County Planning Board