MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue Silver Spring, Maryland 20910-3760 301-495-4500, www.mncppc.org

> Item # 2 MCPB 2-23-06

MEMORANDUM

Date:

February 7, 2006

TO:

Montgomery County Planning Board

VIA:

Jeff Zyontz, Chief, Countywide Planning

Steve Federline, Supervisor, Environmental Planning

FROM:

Mark Pfefferle, Planner Coordinator, Environmental Planning

REVIEW TYPE:

Forest Conservation Plan Review

APPLYING FOR:

Amendment to a Final Forest Conservation Plan (FCP) - Proposal to

remove a 0.25 -acre Forest Conservation Easement

PLAN NAME:

Seneca Highlands

PLAN NUMBER:

819940270

REVIEW BASIS:

Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-

01AM (COMCOR) 18-01AM

ZONE:

R-200

LOCATION:

Located on the southeast corner of Darnestown Road and Eden Rock

Court in Darnestown

APPLICANT:

H.T. Darnestown LLC

ENGINEER:

Macris, Hendricks, and Glascock

ATTORNEY:

Lerch, Early & Brewer, P.A.

HEARING DATE:

February 23, 2006

STAFF RECOMMENDATION: Staff recommends approval of the amendment to Final Forest Conservation Plan 819940270, dated November 18, 2005, subject to the following conditions:

- 1. The Montgomery County Planning Board shall approve a Plat of Correction for Lot 31 and Outlot B removing the Forest Conservation Easement prior to issuance of the building permit for the grocery store expansion at the Darnestown Village Center.
- The applicant shall compensate for the removal of the forest conservation easement by planting an area twice as large as the existing forest conservation easement. Compensation may occur at an approved Forest Conservation Mitigation Bank if an offsite planting area is not available in the watershed.
- 3. Applicant to submit to Environmental Planning for approval a planting plan and location, with appropriate notes, easements and bonding, or the applicant may submit a certificate of compliance to use an approved Forest Conservation Mitigation bank, prior to issuance of the building permit for the grocery store expansion at the Darnestown Village Center.

SITE DESCRIPTION

The site is located at the southeast quadrant of Eden Rock Court and Darnestown Road, in Darnestown. The Planning Board approved Site Plan 819940270, with conditions, on July 21, 1994. This site plan covers 7.3 acres and includes 8 lots and 1 outlot. The developer of the site was granted approval to begin clearing and grading in June 2004. The developer removed 0.28 acres of forest and retained 1.08 acres of forest onsite as per the Forest Conservation Plan (FCP). The FCP approved a 10,831 square foot (0.25-acre) planting area that straddles the property line between Lot 31 and Outlot B. The planting area is isolated from other forests, is not located in an environmentally sensitive area, nor does the planting area screen the adjoining commercial property from the residential lots. The development is nearing completion and the developer planted trees in the 0.25-acre planting area in the fall of 2005 in accordance with the approved FCP. The two-year maintenance and management agreement is in effect.

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PROPOSED FOREST CONSERVATION PLAN CHANGES

This is an application to amend Final FCP 819940270. The applicant proposes to remove an isolated 10,831 square feet (0.25-acre) forest conservation easement that straddles Lot 31 and Outlot B. Since there is no on site location the planting must occur off-site. The applicant

proposes to compensate for the removal of the forest conservation easement at a 2:1 ratio. (Attachment A, page 2, 2nd paragraph, last sentence)

BACKGROUND

The Montgomery County Planning Board approved site plan 819940270 in July 1994. Environmental Planning staff approved the Final FCP in December 2002. Development of the site created a 0.65-acre forest-planting requirement that the applicant proposed to meet through a combination of on and off site reforestation. The onsite reforestation includes a 0.25-acre afforestation area that straddles the property line between Lot 31 and Outlot B. This afforestation area was approved and plat recorded as a Category II forest conservation easement. (Attachment B) The Final FCP includes a condition requiring the applicant to convert the Category II easement to a Category I easement by deed; however, there is no definitive date when the conversion is to occur. This conversion has not occurred to date.

On April 21, 2005, the Planning Board held a hearing on site plan 820050270, Darnestown Village Center. The Darnestown Village Center adjoins the area included in the Seneca Highlands development and includes lots 30 and 31 of Seneca Highlands. The owners of the Darnestown Village Center are also the owners of Lots 30 and 31 in the Seneca Highlands subdivision. Lots 30 and 31 do not contain any structures.

Lots 30 and 31 are recorded with permanent easements as a septic reserve area for the adjoining grocery store on the Darnestown Village Center property making it impossible to construct a house on the lots at this time. The forest conservation easement does not overlap with the septic reserve area on Lot 31 and there are no forest conservation easements on Lot 30. Outlot B contains the stormwater management facility for Seneca Highlands. As a condition of approval of the stormwater management concept plan for Darnestown Village Center, the Department of Permitting Services (DPS) required the applicant to reconstruct the stormwater management facility inlet structures and plunge pools on Outlot B. Measurements to record plat 19960 show a 0.15-acre overlap between the forest conservation and stormwater management easements.

Environmental Planning requested the Darnestown Village Center site plan (820050270) applicant to remove the forest conservation easement that overlaps the stormwater management easement as part of site plan 820050270. Under the DPS Stormwater Management Facility Landscape Guidelines, forest conservation easements and stormwater management easements may not overlap. Forest conservation easements may occur within a stormwater management parcel but cannot occur with the stormwater management easement. It is Environmental Planning's understanding that the stormwater management facility on Outlot B was to be enlarged and part of the forest conservation easement was already within the actual stormwater management facility. Regardless, the entire forest conservation easement on Outlot B overlapped the stormwater management easement and is inconsistent with the DPS Landscape Guidelines.

During the Planning Board site plan hearing for Darnestown Village Center (820050270) on April 21, 2005, the applicant requested that the "requirement that the forest conservation easement not be encumbered by stormwater management facilities be amended to include an exception if the Department of Permitting Services requires such an encumbrance". (Attachment

C, page 6). Environmental Planning staff did not support the exception and the Planning Board declined to create an exception for Darnestown Village Center. The Planning Board opinion, mailed August 12, 2005, requires that the "Applicant shall not encumber any portion of the forest conservation easement with the stormwater management facility". (Attachment C, page 11)

The request to amend Final FCP 819940270 is a direct response to condition 6.b. of the Planning Board opinion for site plan 820050270. The applicant making the request to amend the Seneca Highlands Final FCP (819940270) is the owner of lots 30 and 31 and is the applicant for the Darnestown Village Center site plan (820050270).

PLANNING BOARD REVIEW AUTHORITY

The Forest Conservation Regulation requires Planning Board action of certain types of modifications to an approved FCP. Section 113.A.(2) of the Forest Conservation Regulation states:

Major amendments which entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Directory (depending on who approved the original plan). Notice of each major plan amendment must be given to adjacent property owners as part of the Planning Board or Planning Directory approval processes.

This amendment proposes the removal of a planted forest conservation easement of 10,831 square feet (0.25-acres) and therefore constitutes a major amendment requiring Planning Board approval.

REVIEW ISSUES

Applicant's Position

Site Plan 820050270 requires the applicant to remove the overlapping easements on Outlot B. The proposed amendment to Final FCP Seneca Highlands (819940270) is to comply with condition 6.b of the Planning Board opinion dated August 12, 2005 for the Darnestown Village Center site plan (820050270).

Community Issues

All adjoining and confronting property were notified of the proposed amendment during the second week of January 2006. The property owner on Lot 25, which confronts Lot 31, raised concerns over the removal of the conservation easement. A copy of the property owner's concerns is included in Attachment D. More specifically the property owner has raised the following concerns:

- 1. The property owner (Darnestown Village Center) claims that the existing plan must be abandoned because the forest conservation easement overlaps a stormwater management easement. The storm water management easement is clearly marked on the approved plan. Why was the plan originally approved if this easement overlap was an issue?
- 2. Why must the plantings for the entire area be abandoned? Can just the areas of overlap be addressed?

3. Approximately forty trees were planted in the area in question in the fall of 2004 along with trees along Eden Rock Court and on the properties under/just completed construction. Do these planting answer the partial plan question raised above? What is the guarantee that these trees will not be removed?"

Staff Analysis/Position

Staff supports the request to abandon the forest conservation easement on Lot 31 and Outlot B. Staff specifically included condition of 6.b., in the Darnestown Village Center site plan (820050270) to remove the overlap that exists on Outlot B. When the Planning Board approved site plan for Seneca Highlands (819940270) in 1994 DPS allowed forest conservation and stormwater management easements to overlap. However, since the approval of the Seneca Highlands site plan, DPS updated their stormwater management requirements in 2002 and produced the Stormwater Management Facility Landscape Guidelines. The Guidelines prohibit overlapping forest conservation and stormwater management easements. When there are overlapping forest conservation and stormwater management easements, the stormwater management easement is pre-eminent, meaning if it were necessary to retrofit, maintain, or expand a stormwater management facility, existing and planted trees could be removed by the Department of Permitting Services without compensation and without review by M-NCPPC.

Approximately 0.15 acres of the 0.25-acre forest conservation easement overlaps with the stormwater management easement. If only the overlapping easement area is removed the remaining planting area would be insufficient in width and size to qualify as a forest and no forest conservation credit could apply to the final forest conservation plan. In order for the final FCP for Seneca Highlands (819940270) to comply with Chapter 22A of the Montgomery County Code and the Forest Conservation Regulation it becomes necessary to remove all credit in the onsite afforestation area and to meet the requirements elsewhere.

If the conservation easement were removed, the trees planted as part of Final FCP 819940270 would no longer be protected and could be removed. The applicant indicates their willingness to retain the trees as planted. (Attachment A, page 2, 2 last paragraph) Furthermore, if the conservation easement were to remain as shown on the approved record plat, trees within the overlapping easement would not be permanently protected and could be removed by DPS if and when necessary.

STAFF FINDING

Staff finds the forest removal and removal of the forest conservation easement on Lot 31 and Outlot B is necessary to comply with Condition 6.b. of site plan opinion 8-20050270. Removal of the conservation easement is consistent with the Department of Permitting Services Landscape Guidelines, which prohibits overlapping forest conservation and stormwater management easements. Furthermore, the 0.25-acre reforestation area is not within an environmental buffer, not contiguous to an existing forest, and provides a small amount of screening between the residences at Eden Rock Court and adjoining shopping center.

ATTACHMENTS

- Attachment A Letter from Lerch, Early and Brewer to Mark Pfefferle, Environmental Planning dated December 21, 2005.
- Attachment B- Partial Record Plat 19660 (Show Lot 31 and Outlot B)
- Attachment C Montgomery County Planning Board Opinion for Site Plan 82005027 mailed on August 12, 2005
- Attachment D- Letter from Jeff and Emily Popera to Mark Pfefferle, Environmental Planning, dated January 11, 2006
- Attachment E Amended Final Forest Conservation Plan for Seneca Highlands 819940270

LERCH EARLY & BREWER CHARTERED

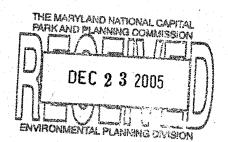
Attachment A

SUITE 460 3 BETHESDA METRO CENTER | BETHESDA, MD 20814-5367 | TEL 301.986.1300 | FAX 301.986.0332 | WWW.LERCHEARLY.COM

ATTORNEYS

MARTIN J. HUTT DIRECT 301.657.0170 FAX 301.347.1774 MJHUTT@LERCHEARLY.COM

December 21, 2005



Mr. Mark Pfefferle Montgomery County Planning Board Environmental Planning Division 8787 Georgia Avenue Silver Spring, Maryland 20910

> Re: Preliminary Plan Amendment 1-89044A Amendment of Forest Conservation Plan # 8-94027

Dear Mr. Pfefferle:

On behalf of H.T. Darnestown LLC ("Darnestown"), owners of Lots 30, 31 and Outlot B, Block A, Seneca Highlands subdivision, we are requesting for the reasons discussed below, an amendment to Forest Conservation Plan #8-94027 (the "Plan") which Plan requires the afforestation for the Seneca Highlands subdivision as recorded among the County land records as Plat No. 19661 and 19660 be planted on Outlot B and Lot 31 along within the Conservation Easement as shown on Plat No. 19660.

The conditions of the Planning Board's Opinions, dated August 12, 2005 in connection with the above referenced preliminary plan amendment (the "Amendment") and Site Plan Application 8-05027 (the "Site Plan") authorizing additional development on Darnestown's adjacent property (Parcel G, Seneca Highlands) require among other items (1) recordation of a written covenant, per MCDPS-Well and Septic specifications and a plat of correction for adjacent lots 30 and 31, Block A in the Seneca Highlands subdivision, placing them in permanent easement as septic reserve for the proposed development; (2) provide documentation that the septic easement does not overlap with the forest conservation easement on Lot 31; and (3) applicant shall not encumber any portion of the of the forest conservation easement with the stormwater management facility.

A copy of the recorded covenant per MCDPS-Wells and Septic specifications is enclosed for your files. A plat of correction for adjacent Lots 30 and 31, Block A, Seneca Highlands subdivision placing them in a permanent easement as septic reserve for the proposed development authorized by the Amendment and Site Plan on Parcel G has previously been provided to you for review and approval prior to recordation among the County land records.



ATTORNEYS

December 21, 2005 Page 2

When the Seneca Highlands subdivision was approved, County Planning Board's forest conservation standards and guidelines allowed forest conservation easement areas to be encumbered by stormwater management facilities. However, under County Planning Board's current standards and guidelines forest conservation easement areas may not be encumbered by stormwater management facilities.

In order to comply with the Planning Board's current standards and guidelines and to comply with the condition of approval that the forest conservation easement not be encumbered by the stormwater management facility, we have filed with you an Amended Forrest Conservation Plan which reflects Planning Board permission to do the following: (a) abandon the existing 10,831 square feet of forest conservation easement area on Lot 31 and Outlot B and (b) to be allowed to comply with the applicable reforestation obligation for the Seneca Highlands subdivisions by planting such trees off-site at a Planning Board approved location at a ratio of 2:1.

Finally, it is the property owner's intent to leave the existing plantings on Lot 31 and Outlot B in place.

Your prompt consideration of this amendment and scheduling before the County Planning Board, if required, would be greatly appreciated.

Very truly yours,

Martin I Butt

MJH:mc

cc:

Liza Fort

Marc Solomon

Attachment B - Partial Record Plat 19660 (showing lots 31 and Outlot B)

