



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-40
Preliminary Plan No. 11991069A
Mill Creek South
Date of Hearing: July 2, 2009

SEP 17 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 16, 2008, Maryland State Highway Administration ("Applicant"), filed an application to amend on a limited basis a previously approved preliminary plan of subdivision that created 8 lots for 8 one-family detached dwelling units on 4.80 acres located on the western cul-de-sac of Briardale Road ("Property" or "Subject Property") in the Shady Grove Sector Plan area ("Master Plan"), by creating right-of-way for the Inter-County Connector (ICC) and removing conservation easements within the right-of-way over 0.064 acres of the 4.80-acre subdivision; and

WHEREAS, the ICC is a State project and the Applicant's ICC right-of-way is consistent with the ICC Record of Decision; and

WHEREAS, the original Preliminary Plan No. 119910690 ("Preliminary Plan"), was approved on March 26, 1992, before the existence of the County Forest Conservation Law; and

WHEREAS, the Preliminary Plan created conservation easements over the forested areas of the 100-year floodplain and stream valley buffers to protect environmentally sensitive areas in the subdivision;

WHEREAS, Applicant's limited preliminary plan amendment application to release that portion of the conservation easements that are within the proposed limits of disturbance in the ICC right-of-way and to provide appropriate mitigation therefore was designated Preliminary Plan No. 11991069A ("Application"); and

WHEREAS, on February 26, 2009, the Planning Board held a public hearing at which it heard testimony and received evidence submitted for the record on the Application, and the Planning Board approved the Application; and

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, on June 18, 2009, the Planning Board granted a Request for Reconsideration of its approval of the Application as a result of defective notice of the hearing to allow additional testimony of residents; and

WHEREAS, the Environmental Planning staff issued a memorandum to the Planning Board, dated June 19, 2009, setting forth a review and analysis by Planning Board staff ("Staff") and staffs of other governmental agencies, which recommended approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on July 2, 2009 the Planning Board held another public hearing on the Application (the "Hearing"); and

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

WHEREAS, on June 2, 2009, the Planning Board adopted the Staff Report and approved the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Robinson; with a vote of 3-2, Commissioners Alfandre, Hanson, and Robinson voting in favor and Commissioners Cryor and Presley voting against.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan Amendment No. 11991069A to create State Highway Administration ICC right-of-way and remove conservation easements within the right-of-way on 0.064 acre out of 4.80 acres of land located on the western cul-de-sac of Briardale Road ("Property" or "Subject Property"), in the Shady Grove Sector Plan area ("Master Plan"), subject to the following conditions:

- 1) The State Highway Administration (SHA) must pay a fee-in-lieu of \$221,110.56, which may be provided in cash and/or by transfer of assets found to be of comparable value to M-NCPPC, to allow the M-NCPPC Department of Parks to plant and maintain 5.64 acres of forest on parkland located in the Potomac River watershed¹. Payment to be made no later than June 30, 2009.
- 2) SHA must prepare an amendment to the conservation easements, include that portion of the SHA plat for the ICC related to the Subject Property as an exhibit,

¹ The \$221,110.56 fee-in-lieu represents the total fee due for removal of all conservation easements within the ICC ROW on three properties west of Georgia Avenue. The fee-in-lieu due for the Mill Creek South subdivision is \$5,096.52.

and record the documents among the land records of Montgomery County, Maryland. SHA must submit all documents related to the amended conservation easements no later than June 30, 2009 for Staff review and approval prior to recording these documents in the land records.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The proposed removal of specific conservation easements within the Subject Property is unavoidable and necessary since the ICC ROW overlaps those portions of the easements to be removed.*
2. *The Application allows the subdivision to continue to satisfy Section 50-32 (special controls for environmentally sensitive areas) of the Montgomery County Code.*

The required fee-in-lieu amount to be paid by SHA to M-NCPPC includes the value of planting new forest on a site at a rate of 2 acres of replacement forest per acre of conservation easement removed. Of the total fee-in-lieu amount to be paid by SHA, \$5,096.52 is to be used to plant and maintain new forest in the Potomac River watershed to mitigate for the loss of conservation easements on this Subject Property. The Board finds that SHA's payment of a fee-in-lieu to M-NCPPC will enable the M-NCPPC Parks Department to mitigate for the loss of forest located in the abandoned conservation easements by planting forest on parkland located in the same watershed as the Subject Property. In addition, the Board finds that the rate of forest replacement is consistent with required forest plantings to replace conservation easements that are approved by the Planning Board for abandonment, in limited circumstances, in other private development projects and in County projects.

BE IT FURTHER RESOLVED, that all other conditions contained in the adopted opinion approving Preliminary Plan 119910690 remain in full force and effect.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is SEP 17 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, Alfandre, 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