



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

MAY 22 2009

MCPB No. 09-44

Preliminary Plan and Forest Conservation Plan No. 11994011B

Small's Nursery

Date of Hearing: February 26, 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 and forest conservation plan applications; and

WHEREAS, on December 16, 2008, the Maryland State Highway Administration ("Applicant"), filed an application to amend on a limited basis a previously approved preliminary plan of subdivision and forest conservation plan that created 130 lots for 130 one-family detached dwelling units on 180.30 acres located on the west side of Georgia Avenue south of the Inter-County Connector ("Property" or "Subject Property") in the Olney Master 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 0.255 acre of the 180.30-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 conservation easements were created by the forest conservation plan included in the approved preliminary plan of subdivision ("Preliminary Plan") to satisfy the requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code; and

WHEREAS, Applicant's limited preliminary plan amendment and forest conservation plan applications to release that portion of the conservation easements that are within the ICC right-of-way and to provide appropriate mitigation therefore were designated Preliminary Plan and Forest Conservation Plan No. 11994011B ("Application"); and

WHEREAS, the Environmental Planning staff issued a memorandum to the Planning Board, dated February 13, 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

Approved as to
Legal Sufficiency:

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WHEREAS, on February 26, 2009, 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 February 26, 2009, the Planning Board adopted the Staff Report and approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Limited Preliminary Plan Amendment and Forest Conservation Plan Amendment No. 11994011B to create State Highway Administration Inter-County Connector right-of-way and remove conservation easements within the right-of-way on 0.255 acres of the 180.30-acre subdivision located on the west side of Georgia Avenue, south of the Intercounty Connector ("Property" or "Subject Property"), in the Olney Master 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, 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 its Staff, 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 \$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 Small's Nursery subdivision is \$19,994.04.

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 all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The previously approved forest conservation plan satisfied the requirements of the Forest Conservation Law by protecting 52 acres of existing forest in Category I conservation easements. This acreage exceeded the break-even point and no forest planting was required. The Board finds that the amended plan will continue to meet the requirements. 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, \$19,994.04 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 within the abandoned conservation easements by planting forest on parkland located in the same watershed as the Subject Property. In addition, 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 11994011A 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 MAY 22 2006 (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 Cryor, seconded by Commissioner Presley, with Chairman Hanson, Vice Chair Robinson, and Commissioners Cryor, Alfandre and Presley present and voting in favor of the motion at its regular meeting held on Thursday, May 7, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board