



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 09-70
Preliminary Plan No. 11994066A
Marsden Tract - Lot 11
Date of Hearing: June 18, 2009

SEP 14 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, Mike Magruder, ("Applicant"), filed a limited amendment application to amend the previous conditions of approval of Preliminary Plan No. 119940660 on a 0.55 acre lot, Lot 11, Riverside Terrace, located on the north side of MacArthur Boulevard at the western end of Canal Bridge Court ("Property" or "Subject Property"), in the Potomac Subregion master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No.11994066A, Marsden Tract - Lot 11 ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated June 4, 2009, setting forth its analysis and recommendation to deny the Application ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on June 18, 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, the Planning Board disagreed with Staff recommendation to deny the Application; and

Approved as to
Legal Sufficiency:

Christina Sorrento 8/13/09
M-NCPPC Legal Department

WHEREAS, the Planning Board recommended conditions to support the Applicant's request to amend the forest conservation plan; and

WHEREAS, on June 18, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson and Robinson, voting in favor Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of the Montgomery County Code Chapter 50, the Planning Board approved a limited amendment to the previous conditions of approval for Preliminary Plan No. 119940660, to revise the conditions of the approved preliminary forest conservation plan on the Subject Property, subject to the following conditions:

- 1) Applicant must submit for technical Staff review and approval, a revised preliminary forest conservation plan to include the following:
 - a. A Category I easement to be located not more than 3 feet from the back edge of the existing retaining wall and appropriately marked with signage.
 - b. A planting plan in conformance with Chapter 22A to reestablish understory in impacted areas.
 - c. Removal of gravel paths/drainage ways within the Category I easement.
- 2) Applicant must install the planting material prescribed by the planting plan, remove gravel paths, and install signage as enumerated in 1(a)-(c) above prior to December 31, 2009.
- 3) The Applicant must record a new plat that shows the approved reduction of the Category I conservation easement on the Subject Property within nine (9) months of the approval date of this Limited Amendment.
- 4) All other applicable conditions of approval contained in Planning Board Opinion dated December 6, 1994 for Preliminary Plan No. 1-94066 (119940660), remains in full force and effect.

BE IT FURTHER RESOLVED, that, having given full consideration to the Staff Report, testimony before the Board, and advice of Staff, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

All previous findings by the Planning Board remain in full force and effect including substantial conformance with the Master Plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

All previous findings by the Planning Board remain in full force and effect including adequacy of public facilities.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

All previous findings by the Planning Board remain in full force and effect including those related to lot configuration.

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

With the conditions of approval referenced above as approved by the Planning Board for Limited Amendment No. 11994066A, the Planning Board finds that this Preliminary Plan satisfies the applicable requirements of Chapter 22A, the Montgomery County Forest Conservation Law. Although the revision to the conservation easement was requested in response to a violation due to encroachments into the easement, the Planning Board determined that a 2:1 offsite planting requirement or a 4:1 offsite retention requirement would compensate for the encroachment for the following reasons: i) the current owner did not cause the encroachment, ii) the violation is not on public land, iii) the Applicant voluntarily came forward to correct the violation, and iv) the Subject Property still meets the requirements of the Forest Conservation Law with the revised easement. Therefore, the Planning Board finds that the Application satisfies all the applicable requirements of the Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

This Limited Amendment approval makes no changes to the stormwater management concept originally approved for the Marsden Tract Subdivision. The Application meets all applicable stormwater management requirements.

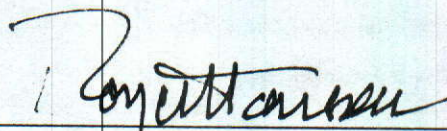
BE IT FURTHER RESOLVED, that this constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 14 2009 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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